

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





NOS. 74-1579 & 74-1568

Nos. 74-1579 and 74-1568

---

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

PETER J. BRENNAN, Secretary of Labor,  
Petitioner,

v.

OCCUPATIONAL SAFETY AND HEALTH REVIEW  
COMMISSION and UNDERHILL CONSTRUCTION  
CORPORATION,

Respondents.

---

UNDERHILL CONSTRUCTION CORP. and DIC CONCRETE  
CORP., Individually and as participants in a  
Joint Venture known as DIC-UNDERHILL,  
A JOINT VENTURE,

Petitioners,

v.

PETER J. BRENNAN and OCCUPATIONAL  
SAFETY AND HEALTH REVIEW COMMISSION,

Respondents.

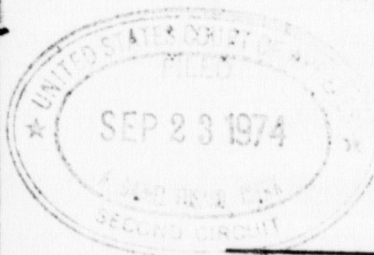
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ON PETITIONS TO REVIEW AN ORDER OF THE  
OCCUPATIONAL SAFETY AND HEALTH REVIEW  
COMMISSION

---

APPENDIX

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9

PAGINATION AS IN ORIGINAL COPY



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UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION  
1825 K STREET, NW  
WASHINGTON, D C 20006

July 9, 1974

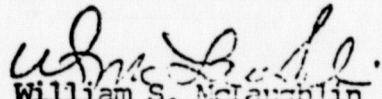
A. Daniel Fusaro, Esq.  
Clerk, U. S. Court of Appeals for  
the Second Circuit  
U. S. Courthouse  
Foley Square  
New York, New York 10007

Re: No. 74-1579, Peter J. Brennan,  
Secretary of Labor, Petitioner  
v. Occupational Safety and  
Health Review Commission and  
Underhill Construction  
Corporation, Respondents.

Dear Mr. Fusaro:

I am enclosing an original and five copies of the certified  
list of Occupational Safety and Health Review Commission pleadings  
in the above case, and have today forwarded under separate cover,  
the entire certified record.

Very truly yours,

  
William S. McLaughlin  
Executive Secretary

Attachment: Names and addresses of parties to whom cc & Certificate  
are sent.



cc and Certificate by mail to:

Stephen F. Eilperin  
Eloise E. Davies  
Attorneys, Appellate Section  
U. S. Department of Justice  
Washington, D.C. 20530

(Counsel for Petitioner)

Bernard Jerski  
Dic-Underhill, A Joint Venture  
212-02 41st Avenue  
Bayside, New York 11361

(Counsel for Employer)

cc: Francis V. LaRuffa, Esq.  
Regional Solicitor  
U. S. Department of Labor  
1515 Broadway - Room 3555  
New York, New York 10036

Michael Levine, Esq.  
Counsel for Appellate Litigation  
Office of the Solicitor  
U. S. Department of Labor - Room 5335  
Washington, D.C. 20210

Judge Joseph Chodes  
Occupational Safety and Health  
Review Commission  
1515 Broadway - Room 3800  
New York, New York 10036

cc: William Pastore, Esq.  
SACKS, MONTGOMERY, MOLINEAUX & PASTORE  
437 Madison Avenue  
New York, New York 10022

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

PETER J. BRENNAN, SECRETARY OF LABOR,

Petitioner,

v.

No. 74-1579

OCCUPATIONAL SAFETY AND HEALTH REVIEW  
COMMISSION and UNDERHILL CONSTRUCTION  
CORPORATION

Respondents.

CERTIFIED LIST OF THE OCCUPATIONAL SAFETY  
AND HEALTH REVIEW COMMISSION

The Occupational Safety and Health Review Commission,  
by its Executive Secretary, certifies that the list set forth  
below constitutes a full and accurate transcript of the entire  
record of a proceeding had before said Commission and known  
upon its records as OSHRC Docket No. 2081. This transcript  
includes the pleadings and transcript and testimony upon which  
the order of the Commission in said proceeding was entered.

VOLUME I

CERTIFIED  
RECORD

Stenographic transcript of testimony taken before  
Review Commission Judge Joseph Chodes on April 24, 1973----- 1 - 74

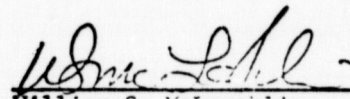
VOLUME II

1. Copy of Secretary's citation for non-serious violation  
dated January 3, 1973----- 1
2. Copy of Secretary's citation for serious violation, dated  
January 3, 1973----- 1
3. Copy of Secretary's notification of proposed penalty,  
dated January 3, 1973----- 1
4. Copy of Employer's notice of contest, dated January 11, 1973----- 1
5. Copy of Secretary's complaint, dated January 29, 1973----- 1 - 7
6. Copy of Employer's Answer, received February 20, 1973----- 1 - 5
7. Copy of Commission's notice of date, time and place of  
hearing, dated March 7, 1973----- 1
8. Copy of Employer's brief, dated June 4, 1973----- 1 - 17
9. Copy of Administrative Law Judge's decision and  
order, dated July 12, 1973----- 1 - 15
10. Copy of Secretary's Petition for Discretionary Review, dated  
August 2, 1973----- 1 - 3
11. Copy of Employer's Petition for Discretionary Review,  
received August 13, 1973----- 1 - 5



12. Copy of Chairman Moran's Direction for Review, dated August 13 1973----- 1
13. Copy of Employer's Brief, dated September 6, 1973----- 1 - 19
14. Copy of Secretary's Brief dated September 7, 1973----- 1 - 17
15. Copy of Commission's Decision, dated March 7, 1974----- 1 - 4

IN TESTIMONY WHEREOF, the Executive Secretary of the Occupational Safety and Health Review Commission, being duly authorized the Occupational Safety and Health Review Commission, has hereunto set his hand and affixed the seal of the Occupational Safety and Health Review Commission in the City of Washington, District of Columbia, this 9<sup>th</sup> day of July, 1974.

  
\_\_\_\_\_  
William S. McLaughlin  
Executive Secretary  
OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION

(SEAL)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

PETER J. BRENNAN, SECRETARY OF LABOR,  
Petitioner,

v.

OCCUPATIONAL SAFETY AND HEALTH REVIEW  
COMMISSION and UNDERHILL CONSTRUCTION  
CORPORATION

Respondents.

No. 74-1579

CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Commission's certified list and chronological list of relevant docket entries in the above captioned case has this day been served by mail upon the following parties at the addresses listed below:

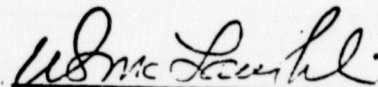
Stephen F. Eilperin  
Eloise E. Davies  
Attorneys, Appellate Section  
U. S. Department of Justice  
Washington, D.C. 20530

(Counsel for Petitioner)

Bernard Jerski  
Dic-Underhill, A Joint Venture  
212-02 41st Avenue  
Bayside, New York 11361

(Counsel for Employer)

Francis V. LaRuffa, Esq.  
Regional Solicitor  
U. S. Department of Labor  
1515 Broadway - Room 3555  
New York, New York 10036



William S. McLaughlin  
Executive Secretary  
OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION

Dated at Washington, D.C.

this 9<sup>th</sup> day of July 1974



UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

UNDERHILL CONSTRUCTION CORP. and DIC CONCRETE  
CORP., Individually and as participants in a  
Joint Venture known as DIC-UNDERHILL, A JOINT  
VENTURE,

Petitioners,

No. 74-1565

v.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

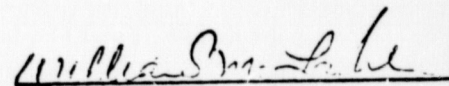
Respondent.

CERTIFICATE OF SERVICE

This undersigned certifies that one copy each of the Commission's  
certified list and chronological list of relevant docket entries in the  
above captioned case has this day been served by mail upon the following  
parties at the addresses listed below

William J. Pastore, Esq. (Counsel for Petitioner)  
SACKS, MONTGOMERY, MOLINEAUX  
and PASTORE  
437 Madison Avenue  
New York, New York 10022

Francis V. LaRuffa, Esq.  
Regional Solicitor  
U. S. Department of Labor  
1515 Broadway - Room 3555  
New York, New York 10036

  
William S. McLaughlin  
Executive Secretary  
OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION

Dated at Washington, D.C.

this 9<sup>th</sup> day of July 1974

## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of:  
Occupational Safety and Health Review Commission  
and Underhill Construction Corporation  
OSHRC Docket No. 2081

1-3-74	Secretary's citation for non-serious violation dated
1-3-74	Secretary's citation for serious violation, dated
1-3-74	Secretary's notification of proposed penalty, dated
1-11-73	Employer's notice of contest, dated
1-29-73	Secretary's complaint, dated
2-20-73	Employer's answer, received
3-7-73	Commission's notice of date, time and place of hearing, dated
6-4-73	Employer's brief, dated
7-12-73	Administrative Law Judge's decision and order, dated
8-2-73	Secretary's Petition for Discretionary Review dated
8-13-73	Employer's Petition for Discretionary Review, received
8-13-73	Chairman Moran's Direction for Review, dated
9-6-73	Employer's Brief, dated
9-7-73	Secretary's Brief dated
9-7-73	Commission's Decision, dated



U.S. DEPARTMENT OF LABOR  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
REGION NO. 2 AREA OFFICE CITY N.Y.

RE: Dic Underhill Joint Venture  
Employer's name

Pursuant to section 10, Occupational Safety and Health Act of 1970, the above-listed case is hereby certified to the Occupational Safety and Health Review Commission.

The documents listed below which were issued or received on the dates listed are enclosed herewith:

- | No. | DATE |  |
|-----|------|--|
| 1.  |      | <u>Citation</u> issued (if more than one list total number _____).                                   |
| 2.  |      | <u>Notice of proposed penalty</u> sent. Total amount of \$ <u>635.00</u>                             |
| 3.  |      | <u>AO received notice of contest</u> from <u>Dic Underhill Joint Venture</u><br>Employer or employee |

If other documents enclosed, list them here with date and item number

APPEARANCES

<b>For the Secretary of Labor</b> F. V. La Ruffa Esq. Reg Sol. U. S. Department of Labor Office of the Solicitor 1515 Broadway Room 3555 New York, New York 10036	<b>For employer/employees</b>	<b>If others list document item No. where listed</b>
--	-------------------------------	--

# DIC-UNDERHILL, A JOINT VENTURE

212-02 41st AVENUE, BAYSIDE, N. Y. 11361

CODE 212 631-7700

January 11, 1973

Mr. Nicholas DiArchangel  
Area Director  
Occupational Safety and Health  
Administration  
U. S. Department of Labor  
90 Church Street  
New York, New York 10007

Dear Sir:

CSHO No. G 2187      OSHA-1 No. 104  
                  G 5189      Region 2  
                  M 2745

Area 4170

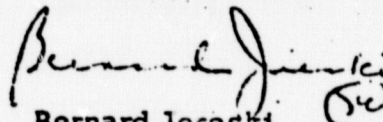
Reference is made to Citation for Serious Violation of 29 C.F.R., Section 1926.500 (d) 1, Page 7381 issued under your signature and received by the undersigned on January 10, 1973.

Reference is also made to Citation for violation of 29 C.F.R., Section 1926.250 (b) (1), Page 7357 issued under your signature and also received by the undersigned on January 10, 1973.

We hereby give notice to the Secretary of Labor that we wish to contest: (a) the issuance of the Citations, and (b) the proposed assessment of penalties.

Very truly yours,

DIC-UNDERHILL, A JOINT VENTURE

  
Bernard Jereski

BJ:nc

cc: The Dic Concrete Corp.  
Mr. Ronnie Forcino



U.S. DEPARTMENT OF LABOR  
Occupational Safety and Health Administration

99 Church St.  
New York, New York, 10007

CSHO NO. C 2127 S 4159	OSHA NO.
AREA 4173	REGION 2

CITATION COVER LETTER

TO: Bldg- Under Hill Joint Venture  
820 Elmont Road  
Elmont, New York, 11003

Date January 3, 1973

Subject: Citation for Alleged Occupational Safety and Health Violation(s)

An inspection of a workplace under your operation, ownership, or control has revealed conditions which we believe do not comply with the provisions of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651. The nature of such alleged violation(s) is described in the enclosed citation with references to applicable standards, rules, regulations, and provisions of the said Act. These conditions must be corrected on or before the date shown to the right of each violation therein.

The Act requires that a copy of the enclosed citation(s) be prominently posted "in a conspicuous place upon receipt" at or near each place a violation referred to in the citation occurred. It must remain posted until all violations cited therein are corrected, or for 3 working days, whichever period is longer. A sufficient number of copies of the attached citation(s) should be prepared to permit posting in accordance with the requirements of the Act.

If you contest the citation you may post a notice to this effect near the citation contested. The Act contains penalties for violation of the posting requirements.

You will soon be notified by certified mail whether or not a proposed penalty will be assessed as a result of the cited violation(s). You have the right to contest the citation(s), the proposed penalties, or both, before the Occupational Safety and Health Review Commission. The Review Commission is an independent quasi-judicial agency with authority to issue decisions regarding citations and proposed penalties. If you do contest, you must so notify the Area Director within 15 working days after receipt of the certified mail notice regarding proposed penalties. If you fail to contest within the 15 working day period, the citation and the proposed assessment of penalties shall be deemed to be a final order not subject to review by any court or agency.

An employee or representative of employees may file a notice to contest the time stated in the citation for the abatement of the alleged violation(s).

Alleged violations that are not contested shall be corrected within the abatement period specified in the citation. Failure to correct an alleged violation within the abatement period may result in a further proposed assessment of penalties.

As to alleged violations with an abatement period of 30 days or less, you are directed to promptly advise the Area Director as to the specific corrective action on each such violation and the date of such action.

Alleged violations having a longer abatement period will require a progress report at the end of each 30-day period. The progress report should detail what has been done, what remains to be done, and the time needed to fully abate each such violation. When the alleged violation is fully abated, the Area Director shall be so advised.

A followup inspection may be made for the purpose of ascertaining that you have posted the citations as required by the Act and corrected the alleged violations as you have reported. The Act provides that whoever knowingly gives false information is subject to a fine up to \$10,000, imprisonment up to 6 months, or both.

If you wish additional information, you may direct such request to the undersigned at the address listed above.

C/P L # 1846-1847

U.S. Department of Labor

By Area Director

Nicholas J. Archangeli

APC L # 426

U.S. DEPARTMENT OF LABOR  
Occupational Safety and Health Administration

CSHO NO. C 5189 C 2107 M 1074	OSHA-1 NO. 104 REGION 2
AREA 4170	

CITATION\*

Citation Number 1 (Page 1) Date Issued January 3, 1973  
 EMPLOYER Dic - Under Hill Joint Venture  
 (Street 820 Elmont Rd.)  
 ADDRESS ( )  
 (City Elmont State New York Zip 11003)  
 An inspection of a workplace under your ownership, operation, or control located at Harlem River Park  
Housing Project, Depot Place & Harlem River, Bronx, N.Y. 10453 and described as follows

has been conducted. On the basis of the inspection it is alleged that you have violated the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, in the following respects:

Item number	Standard or regulation allegedly violated	Description of alleged violation	Date on which alleged violation must be corrected
1	29 CFR 1926.250 (b)(1) Page 7357 As adopted by 29 CFR 1910.12	For failure to ensure that material stored inside buildings under construction shall not be placed within 6' of any hoist way or inside floor openings nor within 10 ft. of and exterior wall which does not extend above the top of the material stored. (A) Building C - 11 floor West End 4" x 4" x 3" wooden shoring stacked extending over edge of building approx. 1'. (B) Building D - 14 floor south end steel braces used to secure forms stacked extending over edge of building approx. 1'.	Immediately on receipt of this citation.

Area Director's Signature

*Nicholas Di Archangel*  
Nicholas Di Archangel

The issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Occupational Safety and Health Review Commission.

RIGHTS OF EMPLOYEES

Any employee or representative of employees who believes that any period of time fixed in this citation for the correction of a violation is unreasonable has the right to contest such time for correction by filing a notice with the U.S. Department of Labor at the address shown above within 15 working days of the receipt by the employer of notice of proposed penalty or notice that no penalty is being proposed.

"No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." Sec. 11 (c)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651.

The law requires that a copy of the enclosed citation(s) "shall be prominently posted" in a conspicuous place "at or near each place a violation referred to in the citation occurred." It must remain posted until all violations cited therein are corrected, or for 3 working days, whichever period is longer.

\* Alleged violations covered by this citation are those which are not serious violations within the meaning of the Act which have a direct or immediate relationship to occupational safety and health.



U.S. DEPARTMENT OF LABOR  
Occupational Safety and Health Administration

CSHO NO.	OSHA NO.
G 2127	
G 5182	
AREA 4170	REGION 2

CITATION FOR SERIOUS VIOLATION\*

Citation Number 1 (Page 1 of 1) Date Issued January 3, 1973

EMPLOYER Dic- Underhill Joint Venture

(Street 820 Elmont Road

ADDRESS (

(City Elmont State New York Zip 11003

An inspection of a workplace under your ownership, operation, or control located at Harlem River Park Housing Project, Depot Place & Harlem River and described as follows:  
Bronx, N.Y. 10453  
has been conducted. On the basis of the inspection it is alleged that you have violated the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, in the following respects:

Standard or regulation allegedly violated	Description of alleged violation	Date on which alleged violation must be corrected
29 CFR 1926.500 (d)(1) Page 7381, As adopted by 29 CFR 1910.12	For failure to ensure that every opensided floor or platform 6' or more above adjacent floor or ground level shall be guarded by a standard railing or equivalent as specified in paragraph (f)(1) of this section. A) (2) Two field engineers surveyors working in building "D" at edge of 15th. floor checking targets, without safety belts, and perimeter guarding was not provided. B) In building "D" on 17th. floor a carpenter working on forms 15th. feet from edge. Perimeter guarding not provided. C) In building "D" on 18th. floor, two men working with cement finishing machines (giraffes) on overhead about 10 ft. from edge, perimeter guarding not provided.	Immediately on receipt of this citation.

Area Director's Signature

Nicholas Di Archangelo

The issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Occupational Safety and Health Review Commission.

RIGHTS OF EMPLOYEES

Any employee or representative of employees who believes that any period of time fixed in this citation for the correction of a violation is unreasonable has the right to contest such time for correction by filing a notice with the U. S. Department of Labor at the address shown above within 15 working days of the receipt by the employer of notice of proposed penalty or notice that no penalty is being proposed.

"No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." Sec. 11 (c)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651.

The law requires that a copy of the enclosed citation(s) "shall be prominently posted" in a conspicuous place "or near each place a violation referred to in the citation occurred." It must remain posted until all violations cited therein are corrected, or for 3 working days, whichever period is longer.

\* A serious violation, according to the Act "shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation." Sec. 17(k).

U.S. DEPARTMENT OF LABOR  
Occupational Safety and Health Administration

CSHO NO.	OSHA-1 NO.
2137	
AREA	REGION
4170	2

NOTIFICATION OF PROPOSED PENALTY

TO: Mr. Under Hill Joint Venture  
313 Elmont Rd.  
Elmont, New York, 11005

On the 2 day of January, 1972, a Citation(s) was (were) issued to you in accordance with the provisions of section 9(a) of the Occupational Safety and Health Act of 1970 (84 Stat. 1601; 29 U.S.C. 651, et seq.) hereinafter referred to as the Act. You were thus notified of certain alleged violations of the Act, as specified in that Citation(s).

YOU ARE HEREBY NOTIFIED that pursuant to the provisions of section 10(a) of the Act, the penalty(ies) set forth below is/are being proposed, based on the above Citation(s):

SERIOUS VIOLATIONS

Citation No.

1

Proposed Penalty

\$ 600.00

OTHER VIOLATIONS\*

Citation No.

1

Item No.

1

Proposed Penalty

\$ 35.00

Total for All Alleged Violations \$ 635.00

\* In the case of each "other violation," the proposed penalty reflects a 50 percent adjustment factor for corrective action taken within the period prescribed in the citation. If a particular alleged violation is not corrected within this period, an automatic additional penalty of 50 percent will be proposed for each violation. However, if you contest an alleged violation in good faith before the Review Commission, the period for correction does not begin to run until the entry of a final order by the Review Commission affirming the citation. The proposed penalty is exclusive of such other additional penalty as may subsequently be proposed for failure to correct a violation within the abatement period.

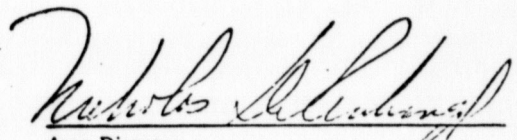


The payment of penalties is to be made by certified check or money order, payable to the order of "Occupational Safety and Health-Labor." Remit to the Area Director whose address appears below.

YOU ARE FURTHER NOTIFIED that the aforesaid Citation(s), this Notification, and the proposed assessment shall be deemed to be the final order of the Occupational Safety and Health Review Commission and not subject to review by any court or agency, unless, within 15 working days from the date of receipt of this notice, you notify the official named below in writing that you intend to contest the Citation or this Notification of Proposed Penalty before the Review Commission. The Review Commission is an independent quasi-judicial agency with authority to issue decisions regarding citations and proposed penalties.

There is no requirement that this Notification be posted.

Dated at 60 Church St. New York, N.Y. 10007 this 3 day  
of January, 1972.

  
Area Director Nicholas M. Archambault  
Occupational Safety and Health Administration  
U. S. Department of Labor

CSHO NO. 63-119 63-119 63-119	CSHA-1 NO. 114
AREA 9100	REGION 2

FORM OSHA 10  
Rev. Nov. 1971

[illegible]

USE FOR DETERMINING PENALTY ADJUSTMENT									
(7) PENALTY ADJUSTMENT FACTORS (IN PERCENT)									
GOOD FAITH		SIZE		HISTORY		TOTAL			
20	10	5	10	5	0	10	0		
<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>				40%	

10. 50 PERCENT  
ABATEMENT CREDIT

50%

6. TOTAL ..... \$125

9. TOTAL .... \$75.00

12. TOTAL PROPOSED PENALTY TO BE ASSESSED TO EMPLOYER UNDER 17(c) \$ 35.00

DATE CITATION SENT ..... 1/3/53  
DATE NOTICE OF PROPOSED PENALTY SENT 7/3/53  
DATE EMPLOYER RECEIVED NOTICE .....  
DATE AND AMOUNT OF PENALTIES REMITTED .....

(19) TOTAL \$\_\_\_\_\_

DATE NOTICE OF ADDITIONAL PROPOSED  
PENALTIES SENT .....  
DATE EMPLOYER RECEIVED NOTICE .....  
PENALTIES REMITTED AND DATE .....

PREPARED BY [Signature] DATE 1/1/73  
REVIEWED BY [Signature] DATE 2/1/73



ADDRESS 820 ELMONT ROAD  
ELMONT N.Y. 11003

Occupational Safety and Health Administration

**PENALTY ASSESSMENT WORKSHEET - SERIOUS VIOLATIONS**

(Use for Determining Proposed Penalties Under Section 17(b) and 17(d) of the Act)

0.75 0.50 0.25	0.75 0.50 0.25
AREA	REGION
4/20	2

Form OSHA-11  
Sept. 1971

[illegible]

DATE CITATIONS SENT

NO. 1 ON 1/3/73

(7) TOTAL \$ 1600.00

(12) TOTAL \$ \_\_\_\_\_

DATE NOTICE OF PROPOSED PENALTY SENT

DATE EMPLOYER RECEIVED NOTICE

PENALTIES REMITTED

DATE

PREPARED BY

REVIEWED BY

DATE 1/4/47

DATE 1/3/23

DATE NOTICE OF PROPOSED  
ADDITIONAL PENALTIES SENT

DATE EMPLOYER RECEIVED

[illegible]

U.S. DEPARTMENT OF LABOR  
Occupational Safety and Health Administration

90 Church St.  
New York, New York, 10007

CSHO NO.	CHATEL NO.
G 2137	
G 5130	
11 2241	104
AREA	REGION
4170	2

CITATION COVER LETTER

TO: Dic- Under Hill Joint Venture  
820 Elmont Road  
Elmont, New York, 11003

Date January 3, 1973

Subject: Citation for Alleged Occupational Safety and Health Violation(s)

An inspection of a workplace under your operation, ownership, or control has revealed conditions which we believe do not comply with the provisions of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651. The nature of such alleged violation(s) is described in the enclosed citation with references to applicable standards, rules, regulations, and provisions of the said Act. These conditions must be corrected on or before the date shown to the right of each violation therein.

The Act requires that a copy of the enclosed citation(s) be prominently posted "in a conspicuous place upon receipt" at or near each place a violation referred to in the citation occurred. It must remain posted until all violations cited therein are corrected, or for 3 working days, whichever period is longer. A sufficient number of copies of the attached citation(s) should be prepared to permit posting in accordance with the requirements of the Act.

If you contest the citation you may post a notice to this effect near the citation contested. The Act contains penalties for violation of the posting requirements.

You will soon be notified by certified mail whether or not a proposed penalty will be assessed as a result of the cited violation(s). You have the right to contest the citation(s), the proposed penalties, or both, before the Occupational Safety and Health Review Commission. The Review Commission is an independent quasi-judicial agency with authority to issue decisions regarding citations and proposed penalties. If you do contest, you must so notify the Area Director within 15 working days after receipt of the certified mail notice regarding proposed penalties. If you fail to contest within the 15 working day period, the citation and the proposed assessment of penalties shall be deemed to be a final order not subject to review by any court or agency.

An employee or representative of employees may file a notice to contest the time stated in the citation for the abatement of the alleged violation(s).

Alleged violations that are not contested shall be corrected within the abatement period specified in the citation. Failure to correct an alleged violation within the abatement period may result in a further proposed assessment of penalties.

As to alleged violations with an abatement period of 30 days or less, you are directed to promptly advise the Area Director as to the specific corrective action on each such violation and the date of such action.

Alleged violations having a longer abatement period will require a progress report at the end of each 30-day period. The progress report should detail what has been done, what remains to be done, and the time needed to fully abate each such violation. When the alleged violation is fully abated, the Area Director shall be so advised.

A followup inspection may be made for the purpose of ascertaining that you have posted the citations as required by the Act and corrected the alleged violations as you have reported. The Act provides that whoever knowingly gives false information is subject to a fine up to \$10,000, imprisonment up to 6 months, or both.

If you wish additional information, you may direct such request to the undersigned at the address listed above.

U.S. Department of Labor

By Area Director

Nicholas Di Archangel



U.S. DEPARTMENT OF LABOR  
Occupational Safety and Health Administration

NOTIFICATION OF PROPOSED PENALTY

OSHA NO. G 2107 C 5100	OSHA-1 NO. 100
AREA 4170	REGION 2

TO: Ric- Under Hill Joint Venture  
620 Elmont Rd.  
Elmont, New York, 11003

On the 5 day of January, 19 73 a Citation(s) was (were) issued to you in accordance with the provisions of section 9(a) of the Occupational Safety and Health Act of 1970 (84 Stat. 1601; 29 U.S.C. 651, et seq.) hereinafter referred to as the Act. You were thus notified of certain alleged violations of the Act, as specified in that Citation(s).

YOU ARE HEREBY NOTIFIED that pursuant to the provisions of section 10(a) of the Act, the penalty(ies) set forth below is/are being proposed, based on the above Citation(s):

SERIOUS VIOLATIONS

Citation No.

1

Proposed Penalty

\$ 600.00

OTHER VIOLATIONS\*

Citation No.

1

Item No.

1

Proposed Penalty

\$ 35.00

Total for All Alleged Violations \$ 635.00

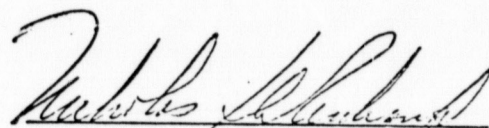
\*In the case of each "other violation," the proposed penalty reflects a 50 percent adjustment factor for corrective action taken within the period prescribed in the citation. If a particular alleged violation is not corrected within this period, an automatic additional penalty of 50 percent will be proposed for each violation. However, if you contest an alleged violation in good faith before the Review Commission, the period for correction does not begin to run until the entry of a final order by the Review Commission affirming the citation. The proposed penalty is exclusive of such other additional penalty as may subsequently be proposed for failure to correct a violation within the abatement period.

The payment of penalties is to be made by certified check or money order, payable to the order of "Occupational Safety and Health-Labor." Remit to the Area Director whose address appears below.

YOU ARE FURTHER NOTIFIED that the aforesaid Citation(s), this Notification, and the proposed assessment shall be deemed to be the final order of the Occupational Safety and Health Review Commission and not subject to review by any court or agency, unless, within 15 working days from the date of receipt of this notice, you notify the official named below in writing that you intend to contest the Citation or this Notification of Proposed Penalty before the Review Commission. The Review Commission is an independent quasi-judicial agency with authority to issue decisions regarding citations and proposed penalties.

There is no requirement that this Notification be posted.

Dated at 90 Church St., New York, N.Y. 10007 this 3 day  
of January, 19 73.



Area Director Nicholas Di Archangel  
Occupational Safety and Health Administration  
U.S. Department of Labor



**U.S. DEPARTMENT OF LABOR**  
Occupational Safety and Health Administration

CSHO NO. 92113	OSHA-1001
10/1	10/1
AREA 4170	REGION 2

CITATION\*

Citation Number #1 10/1 Date Issued \_\_\_\_\_  
 EMPLOYER DIC-UNDERHILL JOINT VENTURE  
 (Street 820 ELMONT ROAD)  
 ADDRESS (\_\_\_\_\_) (City ELMONT State NEW YORK Zip 11003)  
 An inspection of a workplace under your ownership, operation, or control located at HOLEN RIVER BRIDGE  
HOLEN RIVER, DEPT. FISH & GAME, HOLEN RIVER, DEPT. FISH & GAME and described as follows  
ZIP: 10453

has been conducted. On the basis of the inspection it is alleged that you have violated the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, in the following respects:

Item number	Standard or regulation allegedly violated	Description of alleged violation	Date on which alleged violation must be corrected
1	29 CFR 1926.210 (b)(1) 10/1 7357 AS ADVISED BY 29 CFR 1910.12	FOR FAILURE TO ENSURE THAT MATERIAL STORED INSIDE BUILDINGS UNDER CONSTRUCTION SHALL NOT BE PLACED WITHIN 6' OF ANY FIRST WAY OR INSIDE FLAT OPENING, NOR WITHIN 10 FEET OF AN EXTERIOR WALL, WHICH DOES NOT EXTEND ABOVE THE TOP OF THE MATERIAL STRAP. (A) BLDG. C - 11 FLOOR WEST END 4" X 4" X 8' WOODEN SHAKING, STICKED EXTENDING, OVEREDGE OF BLDG. APPROX 1' (B) BLDG. D - 14 FLOOR SOUTH END STEEL CRANES USED TO SLICE FORM STICKED EXTENDING OVER EDGE OF BLDG. APPROX 1'	3 DAYS. Immediate on receipt of this citation

Area Director's Signature \_\_\_\_\_

The issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Occupational Safety and Health Review Commission.

**RIGHTS OF EMPLOYEES**

Any employee or representative of employees who believes that any period of time fixed in this citation for the correction of a violation is unreasonable has the right to contest such time for correction by filing a notice with the U.S. Department of Labor at the address shown above within 15 working days of the receipt by the employer of notice of proposed penalty or notice that a penalty is being proposed.

"No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." Sec. 11 (c)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651.

The law requires that a copy of the enclosed citation(s) "shall be prominently posted" in a conspicuous place "at or near each place a violation referred to in the citation occurred." It must remain posted until all violations cited therein are corrected, or for 3 working days, whichever period is longer.

\* Alleged violations covered by this citation are those which are not serious violations within the meaning of the Act but which have a direct or immediate relationship to occupational safety and health.

U.S. DEPARTMENT OF LABOR  
Occupational Safety and Health Administration

CSHO NO. 92121 85754 112711	DATE 10/4
AREA 4172	REGION 2

CITATION FOR SERIOUS VIOLATION\*

Citation Number #1 #1043 Date Issued \_\_\_\_\_  
 EMPLOYER DIC - UNDER HILL JOINT VENTURE  
 (Street 820 FLECHET ROAD)  
 ADDRESS (\_\_\_\_\_  
 (City ELMONT State NEW YORK Zip 11003

An inspection of a workplace under your ownership, operation, or control located at HUNTER RIVER PARK  
HUNTER RIVER PARK, 121ST AVENUE & HUNTER RIVER and described as follows  
ELMONT, N. Y. 11003  
 has been conducted. On the basis of the inspection it is alleged that you have violated the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, in the following respects:

Standard or regulation allegedly violated	Description of alleged violation	Date on which alleged violation must be corrected
29 CFR 1926.500(d)(1) (PPE 7381) AS ADOPTED BY 29 CFR 1910.12	FAILURE TO ENSURE THAT EVERY OPENED FLOOR OR PARTITION 6' OR MORE ABOVE ADJACENT FLOOR OR GRAVING LEVEL SHALL BE GUARDED BY A STANDARD RAILING OR EQUIVALENT AS SPECIFIED IN PARAGRAPH (f)(6) OF THIS SECTION.  ② TWO FIELD ENGINEERS, SURVEYORS WORKING IN BUILD. "D" AT EDGE OF 15TH FLOOR CHECKING TARGETS, WITHOUT SAFETY BELTS, AND PERIMETER GUARDING WAS NOT PROVIDED.	IMMEDIATELY ON RECEIPT OF THIS CITATION.

Area Director's Signature \_\_\_\_\_

The issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Occupational Safety and Health Review Commission.

RIGHTS OF EMPLOYEES

Any employee or representative of employees who believes that any period of time fixed in this citation for the correction of a violation is unreasonable has the right to contest such time for correction by filing a notice with the U.S. Department of Labor at the address shown above within 15 working days of the receipt by the employer of notice of proposed penalty or notice that no penalty is being proposed.

"No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." Sec. 11 (c)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651.

The law requires that a copy of the enclosed citation(s) "shall be prominently posted" in a conspicuous place "at or near each place a violation referred to in the citation occurred." It must remain posted until all violations cited therein are corrected, or for 3 working days, whichever period is longer.

\* A serious violation, according to the Act "shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation." Sec. 17(k)



U.S. DEPARTMENT OF LABOR  
Occupational Safety and Health Administration

CSHO NO. 65755 62557 4127-45	CSHA-1 NO. 104
AREA 4170	REGION 2

CITATION FOR SERIOUS VIOLATION\*

Citation Number #1 #2 OK3 Date Issued \_\_\_\_\_  
 EMPLOYER DIC-UNION HILL JOINT VENTURE  
 (Street 820 ELMONT ROAD)  
 ADDRESS (City ELMONT State NEW YORK Zip 11003)

An inspection of a workplace under your ownership, operation, or control located at HARLEM RIVER DR. HOLLIS, DISTRICT, DEPT. PLACE - HARLEM RIVER and described as follows  
DRIVER, NY ZIP 10053  
 has been conducted. On the basis of the inspection it is alleged that you have violated the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, in the following respects:

Standard or regulation allegedly violated	Description of alleged violation	Date on which alleged violation must be corrected
29 CFR 1926.500(d)(1) PAGE 7381 AS ADOPTED BY 29 CFR 1910.12	FOR FAILURE TO ENSURE THAT EVERY CRANESIDE FLOOR OR PLATFORM 6' OR MORE ABOVE ADJACENT FLOOR ON GROUND LEVEL SHALL BE GUARDED BY A STANDARD RAILING OR EQUIVALENT AS SPECIFIED IN PARAGRAPHS (f)(2) OF THIS SECTION.  (2) IN BUILDING "B" ON 17TH FLOOR A CARPENTER WORKING ON <del>ROOF</del> <u>ROOF</u> IS FEET FROM EDGE. PERIMETER GUARDING NOT PROVIDED.	LAST

Area Director's Signature \_\_\_\_\_

The issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Occupational Safety and Health Review Commission.

RIGHTS OF EMPLOYEES

Any employee or representative of employees who believes that any period of time fixed in this citation for the correction of a violation is unreasonable has the right to contest such time for correction by filing a notice with the U.S. Department of Labor at the address shown above within 15 working days of the receipt by the employer of notice of proposed penalty or notice that no penalty is being proposed.

"No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." Sec. 11 (c)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651.

The law requires that a copy of the enclosed citation(s) "shall be prominently posted" in a conspicuous place "at or near each place a violation referred to in the citation occurred." It must remain posted until all violations cited therein are corrected, or for 3 working days, whichever period is longer.

\* A serious violation, according to the Act "shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation." Sec. 17(k)

U.S. DEPARTMENT OF LABOR  
Occupational Safety and Health Administration

CSHO NO. 45184 62183 44 3241	DATE NO. 104
AREA 4170	REGION 2

CITATION FOR SERIOUS VIOLATION\*

Citation Number #1 #3 43 Date Issued \_\_\_\_\_  
 EMPLOYER DK-UNDERHILL TOWN VILLAGE  
 (Street 820 ELBERT RD.)  
 ADDRESS (City ELBERT State NEW YORK Zip 11003)

An inspection of a workplace under your ownership, operation, or control located at ARMED FORCES, DEPT OF DEFENSE, ARMY, BRANCH, N.Y. and described as follows  
 has been conducted. On the basis of the inspection it is alleged that you have violated the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, in the following respects:

Standard or regulation allegedly violated	Description of alleged violation	Date on which alleged violation must be corrected
29 CFR 1926.500 (d) (1) PART 771 IS ADAPTED BY 29 CFR 1910.12	FOR FAILURE TO ENSURE THAT EVERY OPEN SIDE OF HOLE OR DITCH FROM 6' OR MORE ABOVE ADJACENT FLOOR OR GRADE LEVEL SURFACE BE GUARDED BY A STAYED, GUARD RAILING OR EQUIVALENT AS SPECIFIED IN PARAGRAPH (f) (6) OF THIS SECTION.	FD 04-
(c)	IN PARAGRAPH "D" ON 18TH FLOOR, TWO MEN WORKING WITH CRANE AT FINISHING MACHINES (GRAPES) ON OVERHEAD ROOF TO FILL FROM EDGE, PERIMETER GUARDING NOT PROVIDED	

Area Director's Signature \_\_\_\_\_

The issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Occupational Safety and Health Review Commission.

**RIGHTS OF EMPLOYEES**

Any employee or representative of employees who believes that any period of time fixed in this citation for the correction of a violation is unreasonable has the right to contest such time for correction by filing a notice with the U.S. Department of Labor at the address shown above within 15 working days of the receipt by the employer of notice of proposed penalty or notice that no penalty is being proposed.

"No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." Sec. 11 (c)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651.

The law requires that a copy of the enclosed citation(s) "shall be prominently posted" in a conspicuous place "at or near each place a violation referred to in the citation occurred." It must remain posted until all violations cited therein are corrected, or for 3 working days, whichever period is longer.

\* A serious violation, according to the Act "shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation." Sec. 17(k).



**U.S. DEPARTMENT OF LABOR  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
SAFETY AND HEALTH REPORT**

<p><b>1. INSPECTION IDENTIFICATION</b></p> <p>CSHO NBR: <span style="border: 1px solid black; padding: 2px;">457</span>    REPORT NBR: <span style="border: 1px solid black; padding: 2px;">1992</span>    FISCAL YEAR: <span style="border: 1px solid black; padding: 2px;">72</span></p> <p><b>2. AREA/REGION</b></p> <p>AREA: <span style="border: 1px solid black; padding: 2px;">4174</span>    REGION: <span style="border: 1px solid black; padding: 2px;">E2</span></p> <p><b>3. CSHO EMPLOYED BY</b></p> <p>FEDERAL: <input checked="" type="checkbox"/>    STATE: <input type="checkbox"/></p> <p><b>4. INSPECTION DATE</b></p> <p>MO: <span style="border: 1px solid black; padding: 2px;">11</span>    DAY: <span style="border: 1px solid black; padding: 2px;">22</span>    YR: <span style="border: 1px solid black; padding: 2px;">72</span></p> <p><b>5. EMPLOYER DATA</b></p> <p>PRIMARY SIC: <span style="border: 1px solid black; padding: 2px;">1711</span>    SECONDARY SIC: <span style="border: 1px solid black; padding: 2px;">1751</span></p> <p>ESTABLISHMENT CODE: <span style="border: 1px solid black; padding: 2px;"> </span></p> <p>NAME: <span style="border: 1px solid black; padding: 2px;">DIO AND UNDERHILL</span></p> <p>STREET ADDRESS OR BUILDING: <span style="border: 1px solid black; padding: 2px;">JOINT VENTURE</span></p> <p>CITY CODE: <span style="border: 1px solid black; padding: 2px;">4174</span>    STATE CODE: <span style="border: 1px solid black; padding: 2px;">36</span>    COUNTY CODE: <span style="border: 1px solid black; padding: 2px;">105</span>    ZIP CODE: <span style="border: 1px solid black; padding: 2px;">10453</span></p> <p align="center"><small>FROM GSA: GEOGRAPHICAL LOCATION CODES</small></p> <p><b>F. CITY</b> <span style="border: 1px solid black; padding: 2px;">N.Y.C.</span>    <b>COUNTY</b> <span style="border: 1px solid black; padding: 2px;">BRONX</span>    <b>STATE</b> <span style="border: 1px solid black; padding: 2px;">N.Y.</span></p> <p><b>G. TELEPHONE NBR</b> <span style="border: 1px solid black; padding: 2px;">212-294-0909</span></p> <p><b>H. TYPE OF LEGAL ENTITY</b> <span style="border: 1px solid black; padding: 2px;">CORPORATION</span></p> <p><b>I. ADDRESS OF PRINCIPAL OFFICE (if different from Q, above)</b> <span style="border: 1px solid black; padding: 2px;">200 N. 10TH ST, NEW YORK, N.Y. 10013</span></p> <p><b>J. TYPE OF BUSINESS</b> <span style="border: 1px solid black; padding: 2px;">CONSTRUCTION - CARPENTRY, ROOFING, ETC.</span></p> <p><b>K. FULL NAME OF ESTABLISHMENT</b> <span style="border: 1px solid black; padding: 2px;">DIO AND UNDERHILL, JOINT VENTURE</span></p> <p><b>L. HOME ADDRESS OF SOLE OWNER OR PARTNER</b></p>	<p><b>7. NUMBER OF EMPLOYEES</b></p> <p>EMPLOYED IN ESTAB: <span style="border: 1px solid black; padding: 2px;"> </span>    AFFECTED BY INSPECTION: <span style="border: 1px solid black; padding: 2px;"> </span></p> <p><b>C. LARGEST SHIFT</b> <span style="border: 1px solid black; padding: 2px;">NIGHT</span>    <b>D. CONTROLLED BY EMPLOYEE</b> <span style="border: 1px solid black; padding: 2px;"> </span></p> <p><b>B. PURPOSE OF INSPECTION</b></p> <p><b>A. TYPE OF INSPECTION (Check One)</b></p> <p>ACCIDENT: <input type="checkbox"/>    COMPLAINT: <input type="checkbox"/>    GENERAL SCHEDULE: <input checked="" type="checkbox"/>    FOLLOWUP: <input type="checkbox"/></p> <p><b>B. SPECIAL PROGRAMS</b></p> <p>TIP: <input type="checkbox"/>    THNP: <input type="checkbox"/>    OTHER: <input checked="" type="checkbox"/></p> <p><b>9. FOLLOWUP INSPECTION ONLY</b> RELATED INITIAL INSPECTION: <span style="border: 1px solid black; padding: 2px;"> </span></p> <p><b>10. ACCIDENT INVESTIGATION ONLY</b></p> <p><b>A. DATE ACCIDENT OCCURRED</b> <span style="border: 1px solid black; padding: 2px;"> </span></p> <p><b>B. CASUALTY DATA</b></p> <p>NUMBER FATALITIES: <span style="border: 1px solid black; padding: 2px;"> </span>    NBR INJURED: <span style="border: 1px solid black; padding: 2px;"> </span>    TOTAL DAYS: <span style="border: 1px solid black; padding: 2px;"> </span>    NBR INJURED: <span style="border: 1px solid black; padding: 2px;"> </span></p> <p><b>C. COST (S) ESTIMATED</b></p> <p>PROPERTY DAMAGE: <span style="border: 1px solid black; padding: 2px;"> </span>    PROPERTY DAMAGE: <span style="border: 1px solid black; padding: 2px;"> </span></p> <p><b>11. NUMBER OF HEALTH SAMPLES</b></p> <p>AIR: <span style="border: 1px solid black; padding: 2px;"> </span>    OTHER: <span style="border: 1px solid black; padding: 2px;"> </span>    OTHER TYPE: <span style="border: 1px solid black; padding: 2px;"> </span></p> <p><b>12. NUMBER INJURY OR HEALTH HAZARDS NOT COVERED BY A STANDARD (Submit an OSHA 9 Form for Each)</b> <span style="border: 1px solid black; padding: 2px;"> </span></p> <p><b>13. EVALUATION OF SAFETY AND HEALTH PROGRAM</b></p> <p>EFFECTIVE: <input type="checkbox"/>    AVERAGE: <input checked="" type="checkbox"/>    INEFFECTIVE: <input type="checkbox"/></p> <p><b>14. CHECK THIS BOX IF AN EMPLOYEE REPRESENTATIVE EXERCISED WALKAROUND PRIVILEGES DURING THIS INSPECTION</b> <input type="checkbox"/></p> <p><b>15. ADVANCE NOTICE</b></p> <p>GIVEN: <input type="checkbox"/>    ADVERSELY AFFECTED INSPECTION: <input type="checkbox"/>    EMPLOYEE(S) STATED ADVANCE NOTICE ADVERSELY AFFECTED INSPECTION: <input type="checkbox"/></p> <p><b>16. CHECK APPROPRIATE BOX IF A PREVIOUS OSHA INSPECTION HAS BEEN MADE IN THIS ESTABLISHMENT</b></p> <p>COMPLETE: <input type="checkbox"/>    PARTIAL: <input type="checkbox"/></p> <p><b>17. CHECK THIS BOX IF THE EMPLOYER IS FOUND TO BE IN COMPLIANCE</b> <input type="checkbox"/></p>
<p><b>18. DESCRIPTION OF WORKSITE</b></p> <p><b>A. CONSTRUCTION OF BUILDINGS OR TYPE OF WORK AREA</b> <span style="border: 1px solid black; padding: 2px;">PROVIDED ON PREVIOUS REPORT - G-5159-#99</span></p> <p><b>B. TYPE OF FIRE PROTECTION</b> <span style="border: 1px solid black; padding: 2px;">SAME AS A</span></p> <p><b>C. DESCRIPTION OF PROCESSES (Raw materials, major processes, and products, etc.)</b> <span style="border: 1px solid black; padding: 2px;">SAME AS A</span></p> <p><b>19. SECONDARY COVERAGE - LIST FEDERAL CONTRACT NUMBER, AND PREFIX (Submit in OSHA 1C)</b></p> <p><b>20. A. DOES EMPLOYER MAINTAIN INJURY AND ILLNESS RECORDS AS REQUIRED?</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p> <p><b>B. WERE FORMS AND INSTRUCTIONS PROVIDED?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p><b>C. DOES EMPLOYER COMPLY WITH THE POSTING REQUIREMENTS? IF "NO" LIST A VIOLATION ON OSHA 1A</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p> <p><b>21. SIGNATURE OF INSPECTOR</b> <span style="border: 1px solid black; padding: 2px;">[Signature]</span>    <b>DATE</b> <span style="border: 1px solid black; padding: 2px;">11/22/72</span>    <b>22. SIGNATURE OF EMPLOYER</b> <span style="border: 1px solid black; padding: 2px;">[Signature]</span>    <b>DATE</b> <span style="border: 1px solid black; padding: 2px;">11/22/72</span></p> <p align="right"><b>Form OSHA-1 REV MAY 1972</b></p>	

U.S. DEPARTMENT OF LABOR  
Occupational Safety and Health Administration

1. CSHO NO. 67-5759	2. REPORT NO. 101
3. AREA 4170	4. REGION 2

SAFETY AND HEALTH REPORT

5. STATE	6. CITY	7. EMPLOYER	8. INSPECTION DATE 22 Nov 72	9. SECONDARY COVERAGE				
				PCA	SCA	CSA	MAR	OTH
10. NAME OF EMPLOYER, TYPE OF LEGAL ENTITY, AND ADDRESS OF PRINCIPAL OFFICE Dec & United Health Venture				11. TELEPHONE NO.				
12. STREET OR BUILDING (Place of Performance) Dept House & Harlem River				13. ZIP CODE				
14. CITY Bronx N.Y.C.			15. STATE NY	16. COUNTY AND CODE Bronx-005				
17. TYPE OF BUSINESS				NUMBER EMPLOYED	18. ALL SHIFTS	19. LARGEST SHIFT		
20. CLASSIFIED CONTRACTS <input type="checkbox"/> YES <input type="checkbox"/> NO				21. SIC 1711	MALE	437		
22. MAIN PLANT <input type="checkbox"/> BRANCH PLANT <input type="checkbox"/> ONLY PLANT <input type="checkbox"/>				FEMALE	0			
23. TYPE		24. COMPLAINT		25. INSPECTION BY		TOTAL		
INITIAL	FOLLOWUP	YES	NO			437		
26. MANAGEMENT OFFICIALS CONTACTED		TITLE		27. EMPLOYEE INSPECTION REPRESENTATIVE(S)		TITLE		
28. MANAGEMENT INSPECTION REPRESENTATIVE(S)				29. OTHER EMPLOYEES CONTACTED (If no authorized employee representative)				
30. CLOSING CONFERENCE CONTACTS (Use the OSHA-1C for details)								
(A) DESCRIPTION OF WORKSITE								
31. (1) CONSTRUCTION OF BUILDINGS OR TYPE OF WORK AREA (Including size) masonry steel deck 41559 41568 41579 - 20 miles								
32. (2) TYPE OF FIRE PROTECTION								
33. (3) DESCRIPTION OF PROCESSES (Raw materials, major processes, and products, etc)								
34. (B) SECONDARY COVERAGE-LIST FEDERAL CONTACT NUMBER, AND PREFIX (Details in OSHA-1C)								
35. (C) DID YOU OBSERVE AN INJURY OR HEALTH HAZARD NOT COVERED BY A STANDARD? <input type="checkbox"/> YES <input type="checkbox"/> NO IF "YES," SUBMIT AN OSHA-9 FORM.								
36. (D) (1) WAS ADVANCE NOTICE OF INSPECTION GIVEN? <input type="checkbox"/> YES <input type="checkbox"/> NO TO WHOM? WHEN? (2) IN YOUR JUDGMENT DID THE ADVANCE NOTICE ADVERSELY AFFECT THE INSPECTION? <input type="checkbox"/> YES <input type="checkbox"/> NO IF "YES," EXPLAIN ON REVERSE OF THIS FORM.								
37. (E) (1) DOES EMPLOYER MAINTAIN INJURY AND ILLNESS RECORDS AS REQUIRED? <input type="checkbox"/> YES <input type="checkbox"/> NO								
38. (2) WERE FORMS AND INSTRUCTIONS PROVIDED? <input type="checkbox"/> YES <input type="checkbox"/> NO								
39. (3) DOES EMPLOYER COMPLY WITH THE POSTING REQUIREMENTS? <input type="checkbox"/> YES <input type="checkbox"/> NO IF "NO," LIST AS A VIOLATION ON OSHA-1A.								
TIME INVESTED - TO NEAREST HOUR								
40. PREPARATION	41. TRAVEL	42. CONFERENCE	43. INSPECTION	44. REPORT PREPARATION	45. TOTAL			
					3			
46. CSHO'S SIGNATURE					DATE			
47. AREA DIRECTOR'S SIGNATURE					DATE			



## COMPLIANCE WORKSHEET

ADDRESS

DATE \_\_\_\_\_

1. CSNO NO 6-5155- 21-2743 3-2127	2. OSHA-1700 104
3. AREA 4170	4. REGION 2

5. Page 1 of 3

6. LOCATION	7. APPARENT VIOLATION(S) NOTED	8. COMMENTS
William Russell Chapter	the following inspections.	
Home #1		
Block C	29 CFR 1926.250(a)(1) (Page 7357) OSHA by 29 CFR 1910.124 7.1. Failure to ensure that material stored in a location inside building is not Construction shall not be placed within 6 feet of any railway or inside from the not within 10 feet of an exterior wall which does not extend above the top of the material stored. Block C - 11 feet - West end - 14" x 4" x 5" wooden shoring placed extending over edge of building floor (Block D 2 44" x 44" Suction End - 14" x 4" Block used to make forms. Shoring extending over edge of building floor. That	Mr. Miller & Mr. Russell, at 9:00 AM that during inspection at the site of the building Mr. Dick Farnsworth for the building was of the problems at the time Conference. Mr. Farnsworth will offer an alternative means for getting the forms from one place to the other. We will consider a floor above the first floor. The shoring is to be placed above the first floor. The shoring is to be placed above the first floor.
Home #2 A	29 CFR 1926.250(a)(1) (Page 7357) OSHA by 29 CFR 1910.124 7.1. Failure to ensure that material stored in a location inside building is not Construction shall not be placed within 6 feet of any railway or inside from the not within 10 feet of an exterior wall which does not extend above the top of the material stored. Block C - 11 feet - West end - 14" x 4" x 5" wooden shoring placed extending over edge of building floor (Block D 2 44" x 44" Suction End - 14" x 4" Block used to make forms. Shoring extending over edge of building floor. That	29 CFR 1926.250(a)(1) by 29 CFR 1910.124 7.1. Failure to ensure that material stored in a location inside building is not Construction shall not be placed within 6 feet of any railway or inside from the not within 10 feet of an exterior wall which does not extend above the top of the material stored. Block C - 11 feet - West end - 14" x 4" x 5" wooden shoring placed extending over edge of building floor (Block D 2 44" x 44" Suction End - 14" x 4" Block used to make forms. Shoring extending over edge of building floor. That
July D	1910.124 7.1. Failure to ensure that material stored in a location inside building is not Construction shall not be placed within 6 feet of any railway or inside from the not within 10 feet of an exterior wall which does not extend above the top of the material stored. Block C - 11 feet - West end - 14" x 4" x 5" wooden shoring placed extending over edge of building floor (Block D 2 44" x 44" Suction End - 14" x 4" Block used to make forms. Shoring extending over edge of building floor. That	Mr. Russell, that the material is not of the building on the 15th floor without proper bracing to prevent the material from falling. The material is not properly braced. The material is not properly braced. The material is not properly braced.

## COMPLIANCE WORKSHEET

ADDRESS

DATE \_\_\_\_\_

1. CSHO NO. 51-2275	2. CSHA-1 NO. 104
3. AREA 41070	4. REGION 2

s. Page 2 of 3

GPO 215-500



## COMPLIANCE WORKSHEET

EMPLOYER

ADDRESS

DATE \_\_\_\_\_

1. CSNO NO 4-3132 4-2115 3-227	2. CSNA-1 NO 104
3. AREA 4170	4. BY C. 10/26 21

5. Page 5 of 5

[illegible]

U.S. DEPARTMENT OF LABOR  
Occupational Safety and Health Administration

1. CSHO NO. 5-759	2. REPORT NO. 104
3. AREA J170	4. REGION 2

SAFETY AND HEALTH REPORT

I D	5. STATE	6. CITY	7. EMPLOYER	8. INSPECTION DATE Dec 27-28 72	9. SECONDARY COVERAGE				
					PCA	SCA	CSA	MAR	OTH
10. NAME OF EMPLOYER, TYPE OF LEGAL ENTITY, AND ADDRESS OF PRINCIPAL OFFICE Soc - United Hill Court House									
11. TELEPHONE NO.									
12. STREET OR BUILDING (Place of Performance) Hudson River Park Chambers									
13. ZIP CODE									
14. CITY Grand Rapids					15. STATE MI		16. COUNTY AND CODE Blanch-005		
17. TYPE OF BUSINESS									
20. CLASSIFIED CONTRACTS <input type="checkbox"/> YES <input type="checkbox"/> NO					21. SIC 1711		18. ALL SHIFTS 437		
22. MAIN PLANT <input type="checkbox"/> BRANCH PLANT <input type="checkbox"/> ONLY PLANT <input type="checkbox"/>							19. LARGEST SHIFT 0		
23. TYPE					24. COMPLAINT		25. INSPECTION BY		
INITIAL		FOLLOWUP		YES		NO		TOTAL 437	
26. MANAGEMENT OFFICIALS CONTACTED					TITLE		27. EMPLOYEE INSPECTION REPRESENTATIVE(S)		
28. MANAGEMENT INSPECTION REPRESENTATIVE(S)							29. OTHER EMPLOYEES CONTACTED (If no authorized employee representative)		
30. CLOSING CONFERENCE CONTACTS (Use the OSHA-1C for details)									

(A) DESCRIPTION OF WORKSITE

31. (1) CONSTRUCTION OF BUILDINGS OR TYPE OF WORK AREA (including size)  
Nov 27 41581 <sup>Dep</sup> 41590 Jan 41599 - 15 min

32. (2) TYPE OF FIRE PROTECTION  
Nov 28 41600 - 41610 41619 19 min

33. (a) DESCRIPTION OF PROCESSES (Raw materials, major processes, end products, etc)

34. (b) SECONDARY COVERAGE-LIST FEDERAL CONTACT NUMBER, AND PREFIX (Details in OSHA-1C)

35. (c) DID YOU OBSERVE AN INJURY OR HEALTH HAZARD NOT COVERED BY A STANDARD? ☐ YES ☐ NO  
IF "YES," SUBMIT AN OSHA-9 FORM.

36. (d) (1) WAS ADVANCE NOTICE OF INSPECTION GIVEN? ☐ YES ☐ NO TO WHOM? WHEN?  
(2) IN YOUR JUDGMENT DID THE ADVANCE NOTICE ADVERSELY AFFECT THE INSPECTION? ☐ YES ☐ NO  
IF "YES," EXPLAIN ON REVERSE OF THIS FORM.

37. (e) (1) DOES EMPLOYER MAINTAIN INJURY AND ILLNESS RECORDS AS REQUIRED? ☐ YES ☐ NO  
(2) WERE FORMS AND INSTRUCTIONS PROVIDED? ☐ YES ☐ NO  
38. (3) DOES EMPLOYER COMPLY WITH THE POSTING REQUIREMENTS? ☐ YES ☐ NO  
IF "NO," LIST AS A VIOLATION ON OSHA-1A.

TIME INVESTED - TO NEAREST HOUR						46. AREA DIRECTOR'S SIGNATURE	
40. PREPARATION	41. TRAVEL	42. CONFERENCE	43. INSPECTION	44. REPORT PREPARATION	45. TOTAL	DATE	
		2	1	1	4		

47. AREA DIRECTOR'S SIGNATURE



## NARRATIVE

1. Date 2/17/20 19 72  
 2. Page 1 of 3

INSPECTION ID		CSHO #	DATE	BY
3-131		107	75	
AREA		REGION		
1175				

3. EMPLOYER San Francisco General Hospital STREET ADDRESS 1600 Divisadero Street  
 CITY San Francisco STATE Calif. ZIP 94115 TELEPHONE NUMBER 212  
 AREA 444-0000

4. NAMES AND ADDRESSES OF ALL ORGANIZED EMPLOYEE GROUPS

INTERNATIONAL NAME	LOCAL NUMBER	TELEPHONE	AREA	ADDRESS	CITY	STATE	ZIP
<u>International Brotherhood of Teamsters</u>	<u>Local 15D</u>	<u>212</u>	<u>UA9-5527</u>	<u>265 West 14th Street</u>	<u>NYC</u>	<u>NY</u>	<u>10011</u>

5. AUTHORIZED REPRESENTATIVES OF EMPLOYEES

NAME	ORGANIZATION AND TITLE	TELEPHONE	AREA	HOME ADDRESS	CITY	STATE	ZIP

ACCOMPANIED ON WALKAROUND YES ☐ NO ☐

INTERNATIONAL NAME United Brotherhood of Carpenters and Joiners of America

LOCAL NUMBER	TELEPHONE	AREA	ADDRESS	CITY	STATE	ZIP
<u>Local 780</u>	<u>212</u>	<u>UA9-5527</u>	<u>125 East 85th Street</u>	<u>NYC</u>	<u>NY</u>	<u>10011</u>

NAME

ORGANIZATION AND TITLE	TELEPHONE	AREA	HOME ADDRESS	CITY	STATE	ZIP

YES ☐ NO ☐

INTERNATIONAL NAME Alphabetic Brotherhood

LOCAL NUMBER	TELEPHONE	AREA	ADDRESS	CITY	STATE	ZIP
<u>Local 385</u>	<u>212</u>	<u>UA9-5527</u>	<u>112 - 23rd Street</u>	<u>NYC</u>	<u>NY</u>	<u>10011</u>

NAME

ORGANIZATION AND TITLE	TELEPHONE	AREA	HOME ADDRESS	CITY	STATE	ZIP

YES ☐ NO ☐

6. MANAGEMENT OFFICIALS CONTACTED

NAMES	TITLES	STREET ADDRESS	CITY	STATE	ZIP
<u>Mr. Nick Forlino</u>	<u>Supt.</u>	<u>1600 Divisadero Street</u>	<u>San Francisco</u>	<u>Calif.</u>	<u>94115</u>
<u>Mr. D. March</u>	<u>Asst. Supt.</u>	<u>1600 Divisadero Street</u>	<u>San Francisco</u>	<u>Calif.</u>	<u>94115</u>

7. OTHER EMPLOYEES CONTACTED

NAMES	TITLES	STREET ADDRESS	CITY	STATE	ZIP
<u>Mr. D. March</u>	<u>Asst. Supt.</u>	<u>1600 Divisadero Street</u>	<u>San Francisco</u>	<u>Calif.</u>	<u>94115</u>

8. CLOSING CONFERENCE CONTACTS

NAMES	TITLES	STREET ADDRESS	CITY	STATE	ZIP
<u>Mr. Nick Forlino</u>	<u>Supt.</u>	<u>1600 Divisadero Street</u>	<u>San Francisco</u>	<u>Calif.</u>	<u>94115</u>
<u>Mr. D. March</u>	<u>Asst. Supt.</u>	<u>1600 Divisadero Street</u>	<u>San Francisco</u>	<u>Calif.</u>	<u>94115</u>

9. MANAGEMENT INSPECTION REPRESENTATIVES

NAMES	TITLES	STREET ADDRESS	CITY	STATE	ZIP
<u>Mr. Nick Forlino</u>	<u>Supt.</u>	<u>1600 Divisadero Street</u>	<u>San Francisco</u>	<u>Calif.</u>	<u>94115</u>
<u>Mr. D. March</u>	<u>Asst. Supt.</u>	<u>1600 Divisadero Street</u>	<u>San Francisco</u>	<u>Calif.</u>	<u>94115</u>

10. COVERAGE INFORMATION:

None

CSHO'S SIGNATURE

12. CLOSING CONFERENCE SUMMARY:

At the closing conference, Mr. Tolson and I  
 conferred with Mr. Nick Tolson, Dept. and  
 Mr. Louis F. Brown, the City of  
 The following apparent violations that were noted  
 during the inspection were discussed. Item 1  
 Missing materials were the top of the building  
 (42 1/2 x 8 1/2 inches) & (Steel braces to building frame)  
 added 1 foot. Mr. Tolson asked if we should  
 advise the City the shoring at the top of building  
 so that the frame could hook up and bring  
 it up to the floor above, he asked if we could  
 offer an alternative method. We suggested that  
 he could possibly use a substantially guarded or  
 covered floor opening to land these the frame in  
 the floor above. And the opening on the floor  
 above shall be guarded with railings and  
 toe boards.

13. COMMENTS:

Item #2 Geo. Underhill employees working  
 on various floors and not to mention. Plaster  
 finished. Two fixed ladders working at  
 edge of Bldg D - 15<sup>th</sup> floor. Two men working with  
 cement finishing machine (GIRAFFES) about 10 ft  
 from edge on the 18<sup>th</sup> floor of Bldg B. A worker  
 working on 17<sup>th</sup> floor of Bldg B about 15 ft from  
 edge.

14. EVALUATION OF SAFETY AND HEALTH PROGRAM:

	EFFECTIVE	AVERAGE	INEFFECTIVE		EFFECTIVE	AVERAGE	INEFFECTIVE
SAFETY RESPONSIBILITY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	PROTECTIVE EQUIPMENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
EMPLOYEE PARTICIPATION	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	HOUSEKEEPING	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TRAINING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FIRST AID	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

15. IN YOUR OPINION, IS A FOLLOWUP INSPECTION NECESSARY? ☒ YES ☐ NO



## NARRATIVE

1. Date 3/22/77  
 2. Page 2 of 2

INSPECTION ID	
CSHO #	IPY. #
1041	77
AREA	REGION
4170	1

3. EMPLOYER		STREET ADDRESS	
<u>East-West Industrial Services</u>		<u>1720 W. 10th St.</u>	
CITY	STATE	ZIP	TELEPHONE NUMBER
<u>Br. 5240</u>	<u>W.V.</u>	<u>10413</u>	<u>724-1041</u>

4. NAMES AND ADDRESSES OF ALL ORGANIZED EMPLOYEE GROUPS			5. AUTHORIZED REPRESENTATIVES OF EMPLOYEES		6. ACCOMPANIED ON WALKAROUND
INTERNATIONAL NAME	LOCAL NUMBER	TELEPHONE AREA	NAME	ORGANIZATION AND TITLE	YES <input type="checkbox"/>  NO <input type="checkbox"/>
ADDRESS				TELEPHONE AREA	
CITY	STATE	ZIP	HOME ADDRESS		
			CITY	STATE ZIP	
INTERNATIONAL NAME	LOCAL NUMBER	TELEPHONE AREA	NAME	ORGANIZATION AND TITLE	YES <input type="checkbox"/>  NO <input type="checkbox"/>
ADDRESS				TELEPHONE AREA	
CITY	STATE	ZIP	HOME ADDRESS		
			CITY	STATE ZIP	
INTERNATIONAL NAME	LOCAL NUMBER	TELEPHONE AREA	NAME	ORGANIZATION AND TITLE	YES <input type="checkbox"/>  NO <input type="checkbox"/>
ADDRESS				TELEPHONE AREA	
CITY	STATE	ZIP	HOME ADDRESS		
			CITY	STATE ZIP	

6. MANAGEMENT OFFICIALS CONTACTED		7. OTHER EMPLOYEES CONTACTED	
NAMES	TITLES	NAME	STREET ADDRESS
		<u>Mr. Michael R. Bello</u>	<u>1720 W. 10th St.</u>
		<u>Organization, if any</u>	<u>City</u>
		<u>Occupation</u>	<u>State</u>
		<u>Mr. R. J. Bello</u>	<u>724-1041</u>

8. CLOSING CONFERENCE CONTACTS		9. MANAGEMENT INSPECTION REPRESENTATIVES	
NAMES	TITLES	NAME	STREET ADDRESS
		ORGANIZATION, IF ANY	CITY
		OCCUPATION	STATE ZIP

9. MANAGEMENT INSPECTION REPRESENTATIVES		10. COVERAGE INFORMATION:	
NAMES	TITLES	NAME	STREET ADDRESS
		ORGANIZATION, IF ANY	CITY
		OCCUPATION	STATE ZIP

10. COVERAGE INFORMATION:	

11.	CSHO'S SIGNATURE <u>[Signature]</u>
-----	-------------------------------------





(5)

UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

-----  
PETER J. BRENNAN, SECRETARY OF LABOR,  
UNITED STATES DEPARTMENT OF LABOR, :

v. :

CSHRC DOCKET

UNDERHILL CONSTRUCTION CORP., :  
Individually and DIC CONCRETE, :  
Individually, trading as DIC :  
UNDERHILL, Joint Venture, :

NO.

Respondent, :

LOCAL 46, LATHERS, LOCAL 6A, CEMENT :  
AND CONCRETE WORKERS, LOCAL 20, :  
CARPENTERS, :

Authorized :  
Employee :  
Representatives. :

-----  
C O M P L A I N T

Inspection has disclosed that, at the times and in the manner hereinafter stated, the provisions of the Occupational Safety and Health Act of 1970 (84 Stat. 1604, 29 U.S.C. 651, et seq.), hereinafter referred to as the Act, and the Occupational Safety and Health Standards promulgated thereunder (29 C.F.R. Part 1926) have been violated. It is, therefore, averred and charged that:

I

Jurisdiction of this action is conferred upon the Occupational Safety and Health Review Commission by section 10(c) of the Act.

II

The respondent, UNDERHILL CONSTRUCTION CORP., a corporation organized under the laws of the State of New York and doing business in the State of New York, maintaining an office and place of business at 212-02 41st Avenue, Bayside, New York and DIC CONCRETE, a corporation doing business and maintaining an office and place of business at 320 Elmont Road, Elmont, New York are and at all times hereinafter mentioned were engaged in the business of construction including the pouring of concrete and traded as DIC UNDERHILL, A Joint Venture, respondent which had a place of business at 212-02 41st Avenue, Bayside, New York.

III

Many of the materials and supplies used by respondents were manufactured outside the State of New York and the respondent corporations were and are engaged in a business affecting commerce within the meaning of sections 3(3) and 3(5) of the Act.



#### IV

As a result of an inspection by an authorized representative of the plaintiff, respondent corporation was issued a citation for violations on May 1, 1973 pursuant to section 9(a) of the Act.

#### V

On April 4 through and including April 12, 1973 at the jobsite at Starrett City, Brooklyn, New York, a 47 story apartment building complex the respondents violated the following standards which were promulgated pursuant to section 6 of the Act:

- a) Respondents violated 29 CFR 1926.252(a) in that respondents failed to provide an enclosed chute of wood, or equivalent material where materials were dropped more than 20 feet to a point lying outside the exterior walls of the building. This condition existed at building A1, A2, A3, A4 and A5.
- b) Respondents violated 29 CFR 1926.450(a)(9) in that the side rails of a ladder did not extend 36 inches above the landing. This condition existed in building 19, second floor.
- c) The respondents violated 29 CFR 1926.24 in that they failed to develop and maintain an effective fire protection and prevention program at this jobsite throughout all phases of the construction work. The employer did not insure the availability of fire protection and suppression equipment required by subpart F of this part. This condition existed at buildings A1, A2, A3, A4 and A5.

d) Respondents violated 29 CFR 1926.100(a) in that respondents failed to provide employees working in areas where there is a possible danger of head injury, or from falling or flying objects with protective helmets. Specifically, one employee without a protective helmet was working the boom of the manotower crane at building A4 and 12 men without protective helmets were working on top floor of building A4.

e) Respondents violated 29 CFR 1926.500(d)(1) in that respondents failed to provide every open sided floor 6 feet or more above adjacent floor or ground level with a standard railing or the equivalent, as specified in paragraph (f)(1) of 1926.500 on all open sides and with a standard toe board wherever, beneath the open sides persons can pass. This condition existed in building A1, A2, A3, A4, A5 and on all floors above the first floor.

The respondents did not contest within the statutory period Item No. 5 of the citation and it is now a final order of the Review Commission.

## VI

The violations alleged in the citation in paragraph V were violations within the meaning of section 17(c) of the Act and had a direct and immediate relationship to the safety and health of the employees on the work site.



## VII

On May 1, 1973 a notification of proposed penalty for the citation was served on the respondents proposing a penalty of \$1145. In determining the amount of the proposed penalty, due consideration was given to the size of the business of the respondents, the gravity of the violations, the good faith of the employer and the history of previous violations, as required under section 17(j) of the Act.

## VIII

On May 22, 1973 the respondents filed with a representative of the Secretary of Labor, a notification of intent to contest the aforesaid citation and the proposed assessment of the penalty pursuant to the provisions of section 10(c) of the Act. This notification of intent to contest was duly transmitted to the Occupational Safety and Health Review Commission and jurisdiction of this proceeding is conferred upon the Commission by section 10(c) of the Act.

## IX

Several of respondent's employees are affected by the violation reflected in paragraph V herein. The authorized employee representatives of the affected employees are Local 46, Lathers, which has an office at 1322 3rd Avenue, New York, New York, Local 6A, Cement and Concrete Workers which has an office at 37 Union Square, New York, New York and Local 20 which has an office at 544 Vanderbilt Avenue, Staten Island, New York.

At all times relevant herein they have had collective bargaining agreements with the respondent corporation.

WHEREFORE, the aforesaid citation and proposed penalty should be affirmed.

/s/ WILLIAM J. KILBERG  
WILLIAM J. KILBERG  
Solicitor of Labor

/s/ FRANCIS V. LA RUTTA  
FRANCIS V. LA RUTTA  
Regional Solicitor

/s/ LOUIS D. DE BERNARDO  
LOUIS D. DE BERNARDO  
Attorney

UNITED STATES DEPARTMENT OF  
LABOR, ATTORNEYS FOR RICHARD  
J. BRENNAN, SECRETARY OF LABOR.



Notice to the UNDERHILL CONSTRUCTION CORP.,  
DIC CONCRETE & DIC UNDERHILL,  
A Joint Venture

You are hereby notified that you must plead or otherwise answer this complaint, either denying or admitting the allegations, within 15 days of your receipt of this complaint. Failure to do so may result in dismissal of your notice of contest. See Rule 33(b), Rules of Procedure, Occupational Safety and Health Review Commission.

CERTIFICATE OF SERVICE

I, ELMA HOLDIP, an employee of the United States Department of Labor in the Office of the Regional Solicitor, 1515 Broadway, New York, New York certify that on the // day of June 1973, I personally mailed by first class mail, bearing Government frank, five (5) copies of the attached

COMPLAINT

two copies being addressed to Bernard Jereski and one copy being addressed to Local 46, Lathers, Local 6A, Cement and Concrete Workers and Local 20, Carpenters at the addresses stated after their names:

Bernard Jereski  
Dic Underhill, A Joint Venture  
212-02 41st Street  
Bayside, New York 11361

Local 46, Lathers  
1322 3rd Avenue  
New York, New York

Local 6A, Cement & Concrete Workers  
37 Union Square  
New York, New York

Local 20, Carpenters  
544 Vanderbilt Avenue  
Staten Island, New York

/s/ ELMA HOLDIP  
ELMA HOLDIP



196753

## NOTICE OF HEARING

SECRETARY  
OF LABOR v. Dic-Underhill, A Joint VentureOSAHRC  
DOCKET NO. 2081

A Hearing will be held in the above case beginning at 10:00  
a.m. p.m.  
on April 24, 1973 at 1515 Broadway, Courtroom 3800,

in New York, New York  
State

Pursuant to Section 9(b) of the Occupational Safety and Health Act of 1970 and Section 2200.7(i) and (j) of the Commission's Rules (copy enclosed), each employer is hereby required to serve and/or post this NOTICE OF HEARING in order to afford affected employees or their representatives an opportunity to participate as parties during this proceeding.

Affected employees are entitled to participate in this hearing under terms and conditions established by the Occupational Safety and Health Review Commission in its Rules of Procedure. Notice of intent to participate should be sent to:

Occupational Safety and Health Review Commission  
1825 K Street, N.W.  
Washington, D. C. 20006

Dated: March 7, 1973cc: Bernard Jereski, Dic-Underhill, A Joint Venture, 212-02 41st Avenue,  
Bayside, New York 11361✓ Francis V. LaRuffa, Regional Solicitor, 1515 Broadway, Room 3555,  
New York, New York 10036CERTIFIED MAIL # 196753  
RETURN RECEIPT REQUESTED

42

C-UNDERHILL, A JOINT VENTURE

212-02 41ST AVENUE, BAYSIDE, N.Y. 11361

CODE 212 631-7700

February 14, 1973

National Safety and Health  
Commission  
Street, N.W.  
Washington, D. C. 20006

Re: men:

Re: Dic-Underhill, A Joint Venture

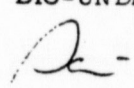
Enclosed herewith is the Answer of Dic-Underhill,  
Joint Venture, Respondent in the above referenced pending

Copies of the Answer and this letter have been  
sent by registered mail as indicated below.

Procedural rules with respect to posting have  
been complied with

Very truly yours,

DIC-UNDERHILL, A JOINT VENTURE

  
Bernard Jereski

Enclosure  
Francis V. LaRuffa, Regional Solicitor, U.S. Dept. of Labor  
International Union of Operating Engineers, Local 15D  
Brotherhood of Carpenters and Joiners of America, Local 385  
United Cement, Lime and Gypsum Workers International  
Union, Local 700

UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

-----X  
JAMES D. HODGSON, SECRETARY OF LABOR,  
UNITED STATES DEPARTMENT OF LABOR,

v.

UNDERHILL CONSTRUCTION CORP., individually and  
DIC CONCRETE CORP., individually, and trading  
as DIC-UNDERHILL, A JOINT VENTURE,

Respondents,

INTERNATIONAL UNION OF OPERATING ENGINEERS,  
AFL-CIO, LOCAL 15D; UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA, AFL-CIO,  
LOCAL 385; AND UNITED CEMENT, LIME AND  
GYPSUM WORKERS INTERNATIONAL UNION, AFL-CIO,  
LOCAL 780,

Authorized  
Employee  
Representatives  
-----X

ANSWER



UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

-----X  
JAMES D. HODGSON, SECRETARY OF LABOR,  
UNITED STATES DEPARTMENT OF LABOR,

v.

UNDERHILL CONSTRUCTION CORP., individually and  
DIC CONCRETE CORP., individually, and trading  
as DIC-UNDERHILL, A JOINT VENTURE,

Respondents,

INTERNATIONAL UNION OF OPERATING ENGINEERS,  
AFL-CIO, LOCAL 15D; UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA, AFL-CIO,  
LOCAL 385; AND UNITED CEMENT, LIME AND  
GYPSUM WORKERS INTERNATIONAL UNION, AFL-CIO,  
LOCAL 780,

Authorized  
Employee  
Representatives  
-----X

RESPONDENT'S ANSWER

Respondent being familiar with the provisions of Section 5(a)(2) of the Occupational Safety and Health Act of 1970 (84 Stat. 1604; 29 U.S.C. 651 et seq.) hereinafter referred to as the Act, and the Occupational Safety and Health Standards promulgated thereunder (29 C.F.R. Part 1926) referred to in the complaint and as adopted to the standards under the Occupational Safety and Health Act at 29 C.F.R. Part 1910.12, answered as follows:

1. Respondent admits the allegation stated and contained in paragraph "I" of the Complaint.

2. Respondent admits the allegation stated and contained in Paragraph "II" of the Complaint, except that it denies that Respondent

was engaged in a business affecting commerce within the meaning of Section 3(5) of the Act.

3. Respondent admits that it was issued one citation for a serious violation on January 3, 1973. Except as hereinbefore specifically admitted, Respondent denies knowledge or information sufficient to form a belief as to the allegations stated and contained in paragraph "III" of the Complaint.

4. Insofar as respondent failed to guard open sided floor, 6 feet or more above adjacent floor area or ground floor, by standard railing or equivalent thereof, Respondent denies this allegation. Respondent further states that insofar as the workman on the 17th floor of Building B is concerned, this man was not assigned to work in this area. Respondent also states that insofar as the workmen on the 18th floor of Building B is concerned, these men were not in the immediate proximity of the perimeter of the Building and therefore were not exposed to any risk; insofar as the two workmen on the 15th floor of Building D are concerned, these men were working in this area for a short duration of time and as such were not exposed to any particular risk, and in addition, we believe that in order for them to have done their work properly would have had to remove any safety railing that had been placed in this area as required by 29 C.F.R. 1926.500 (d)(1) in order to perform their work thus exposing them to additional risk and hazard.

5. Respondent admits that it was issued a citation for non-

serious violations on January 3, 1973. Except as hereinbefore specifically admitted, Respondent denies knowledge or information sufficient to form a belief as to the allegations stated and contained in paragraph "VI" of the Complaint.

6. Respondent denies the allegations contained in paragraph "VII" of the Complaint. Respondent is of the belief that it has not violated the standard found in 29 C.F.R. 1926.250 (b)(1) inasmuch as material located inside the building under construction within 10 feet of the exterior wall which did not extend above the top of material located on the eleventh floor of Building C and the 14th floor of Building D, was not stored in that location as the word "stored" is defined in common usage.

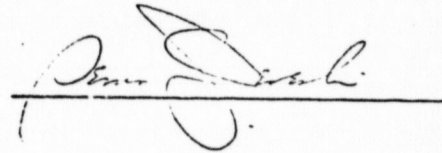
7. Respondent admits that on January 3, 1973, a notification of proposed penalty for the aforesaid serious violation was mailed to the Respondent proposing a penalty of \$600 and fixed an immediate abatement date with respect to said alleged violation. Respondent neither admits nor denies the allegations stated and contained in paragraph "IX" of the Complaint concerning other citations. Except as specifically admitted or otherwise stated above, Respondent denies knowledge or information sufficient to form a belief as to the allegations stated and contained in paragraph "IX" of the Complaint.

WHEREAS, it is the belief of Respondent as set forth above



that it is not in violation of the aforementioned Section of the Occupational Safety and Health Act of 1970, nor the Occupational Safety and Health Standards promulgated thereunder, Respondent requests that the Commission find for and dismiss all proposed assessments and penalties.

DIC-UNDERHILL, A JOINT VENTURE



UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

V.

UNDERHILL CONSTRUCTION CORP., individually,  
and DIC CONCRETE CORP., individually and  
trading as DIC-UNDERHILL, A JOINT VENTURE

Respondents.

DECISION AND ORDER

OSAHRC DOCKET NO. 2081

APPEARANCES:

Louis D. DeBernardo, Esq., of New York City, for the Secretary of Labor

Bernard Jereski, of New York City, for the Respondent

JOSEPH Chodes, Judge, OSAHRC

STATEMENT OF THE CASE

This is a proceeding pursuant to Section 10 of the Occupational Safety and Health Act of 1970 (29 USC et seq., hereafter called the Act), in which the Respondent is contesting two Citations issued by the Complainant against the Respondents under the authority vested in Complainant by Section 9(a) of the Act. The Citations allege that as the result of the inspection of a workplace under the ownership, operation or control of the Respondents, located at the Harlem River Park Housing Project, Depot Place and Harlem River, Bronx, New York, the Respondent has violated Section 5(a)(2) of the Act by failing to comply with certain occupational safety and health standards promulgated by the Secretary of Labor pursuant to Section 6 thereof.

OSHRC EXECUTIVE SECRETARY

JUDGE'S DECISION REC'D JUL 12 1973

FINAL ORDER ON

AUG 13 1973

The Citations which were issued on January 3, 1973, allege that the violations resulted from a failure to comply with certain standards promulgated by the Secretary by publication in the Federal Register and codified in 29 CFR Part 1518. The standards prescribed by Part 1518 were adopted as standards under the Occupational Safety and Health Act at 29 CFR 1910.12. Effective on December 30, 1971, Part 1518 was redesignated as Part 1926.

Specifically, the Respondents were charged with serious violation of 29 CFR 1926.500(d)(1) which provides:

"(d) Guarding of open-sided floors, platforms, and runways.  
(1) Every open-sided floor or platform 6 feet or more above adjacent floor or ground level shall be guarded by a standard railing, or the equivalent, as specified in paragraph (f)(i) of this section, on all open sides, except where there is entrance to a ramp, stairway, or fixed ladder. The railing shall be provided with a standard toe-board wherever, beneath the open sides, persons can pass, or there is moving machinery, or there is equipment with which falling materials could create a hazard."

Respondents were also charged with nonserious violation of 29 CFR 1926.250(b)(1) which provides:

"(b) Material storage. (1) Material stored inside buildings under construction shall not be placed within 6 feet of any hoistway or inside floor openings, nor within 10 feet of an exterior wall which does not extend above the top of the material stored."

Pursuant to the enforcement procedure set forth in Section 10(a) of the Act, the Respondents were notified by letter dated January 3, 1973, from Nicholas A. DiArchangel, Area Director of the New York, New York area, Occupational Safety and Health Administration, U. S. Department of Labor,



of a proposed penalty for the alleged serious violation in the amount of \$600 and of a proposed penalty for the alleged nonserious violation in the amount of \$35, for a total of \$635.

After Respondents contested this enforcement action, and a Complaint and Answer had been filed by the parties, the case came on for hearing at New York, New York, on April 24, 1973.

COMPLAINT AMENDED

At the hearing the Judge granted the Complainant's motion to amend the Complaint, paragraph IV, first line, by inserting "and November 27, 1972" after "November 22, 1972" (T-63).

STIPULATIONS

1. The Respondent, Underhill Construction Corp., is a New York corporation with its principal office located in Bayside, New York (T-4).
2. The Respondent, Dic Concrete Corp., is a New York corporation with its principal office located in Elmont, New York (T-4).
3. The Respondents traded as Dic-Underhill, a Joint Venture, with an office in Bayside, New York (T-4, 5).
4. Respondents regularly use cement imported from Norway, cranes manufactured in Wisconsin and trucks manufactured in Detroit, Michigan (T-5).
5. In the year 1972 the Respondents had a net worth of two million dollars (T-5).
6. During 1973 the Respondents had a daily average of more than a thousand employees (T-5).

7. The materials referred to in the Citation for nonserious violation of 29 CFR 1926.250(b)(1) were under the control of the Respondents (T-6).

8. The Respondents were served with the Citations and Notification of Proposed Penalty which are the subject of this proceeding and the Citations were posted within three days after receipt (T-5, 6).

APPLICABILITY OF STANDARDS TO RESPONDENT'S WORKPLACE

Respondent, in its brief, asserts that the violations charged against it do not apply to contracts for which negotiations were commenced prior to April 28, 1971, or to contracts entered into prior to April 28, 1971. The standards the Respondent is alleged to have violated, to wit, 29 CFR 1926.500(d)(1) and 29 CFR 1926.250(b)(1), were originally promulgated under the authority of the Contract Work Hours and Safety Standard Act, as amended, (83 Stat. 96; 40 U.S.C. 333) commonly referred to as the Construction Safety Act. These standards were adopted as occupational safety and health standards under the authority of Section 6(a) of the Occupational Safety and Health Act of 1970 in 29 CFR 1910.12(a). As a result, the standards in 29 CFR Part 1926, although originally applicable only to Federal and federally assisted contracts, became applicable "to every employment and place of employment of every employee engaged in construction work" under the provisions of 29 CFR 1910.12(a).

29 CFR 1926.1050 provides, in pertinent part, that the standards "shall become effective on April 24, 1971 for all Federal and federally assisted advertised contracts subject thereto which are advertised after that date and on April 27, 1971, for all such negotiated contracts for which negotiations begin

after that date". However, 29 CFR 1910.17(a) provides, in pertinent part, that the standards adopted under 29 CFR 1910.12(a) shall be effective on August 27, 1971.

The question to be resolved is whether, assuming that the Respondent entered into its contract for construction work at the Harlem River Park Housing Project before April 28, 1971, the effective date of the standards charged against the Respondent are to be determined under the provisions of 29 CFR 1926.1050 or 29 CFR 1910.17(a).

In the case of Secretary of Labor v. Diesel Construction Co., OSAHRC Docket No. 827, which became a final order of the Commission on February 20, 1973, Judge Ditore held that, even though the contract by the Respondent was entered into prior to April 27, 1971, the construction standards in 29 CFR Part 1926 were applicable to all employers engaged in construction work whether or not the work engaged in was Federal or federally assisted. Judge Ditore pointed out that 29 CFR 1926.1050, dealing with effective dates, was not a standard and consequently the effective dates and exemptions therein were not adopted by 29 CFR 1910.12(a). The results reached in the Diesel case were cited with approval in the U. S. District Court case of United States of America v. J. M. Rosa Construction Co., Inc., decided April 2, 1973, CCH, Employment Safety and Health Guide, paragraph 15,643. This was a suit to recover a penalty incurred under the Occupational Safety and Health Act of 1970. Judge Newman held that with respect to a federally assisted contract advertised before April 24, 1971, the standards became effective on August 27, 1971 as provided in 29 CFR 1910.17(a).



In *Secretary of Labor v. Kessler & Sons Construction Co.*, OSAHRC Docket No. 306, Judge Duval held that an employer who entered into a Federal contract before April 24, 1971 was not exempted from complying with the construction standards adopted by 29 CFR 1910.12 commencing on August 27, 1971. This case was called for review by the Commission on another question. See CCH Employment Safety and Health Guide, Current Topical Index, p. 5914.

Two contrary decisions are cited by the Respondent. *Secretary of Labor v. Underhill Construction Corporation*, OSAHRC Docket No. 1307, decided by Judge Chalk, held that the effective dates provided in 29 CFR 1926.1050 are for application to a contract entered into prior to April 24, 1971 and the citation and penalty were voided. It is not clear whether or not the contract involved was Federal or federally assisted. In any case, on June 20, 1973, the Review Commission called up the decision for review. In *Secretary of Labor v. Universal Sheet Metal Corporation*, OSAHRC Docket No. 657, Judge Worcester held that the Occupational Safety and Health Review Commission did not have jurisdiction in a case involving a Federal contract which had been advertised and let prior to April 21, 1971. The case is currently under review by the Review Commission.

In the opinion of the Judge, there is no question but that, at least insofar as non-federal construction contracts are concerned, the effective date of the standards in 29 CFR Part 1926 is August 27, 1971 as provided in 29 CFR 1910.17(a). Whether the same effective date applies to Federal or federally assisted contracts is not necessary to decide here as there is no evidence in the case that the Respondent was operating under a Federal or federally assisted contract. Accordingly, the Respondent may be held accountable for the violations charged which occurred subsequent to August 27, 1971, namely, on November 22, 1972.

SUMMARY OF EVIDENCE AND OPINION

Henry Grudzwick, one of the Complainant's Compliance Officers was the only witness at the hearing. He testified that from November 21 to November 27, 1972 he inspected the Harlem River Park Housing Project where four high-rise buildings were under construction. The buildings were designated A, B, C and D and at the time of inspection had reached a height of about 21 floors (T-9, 10).

1. Alleged Violation of 29 CFR 1926.500(d)(1)

On November 22, 1972, Mr. Grudzwick inspected the fifteenth floor of Building D and found two field engineers, employees of the Respondents, "checking targets" at the edge of the floor which had no perimeter guarding (T-19, 20). The men had no safety belts or other type of personal safety equipment, and they were "hanging over the edge" (T-21, 49).

Mr. Grudzwick inspected the seventeenth floor of Building B on November 27, 1972, and saw an employee of the Respondents, a carpenter, working on forms, approximately fifteen feet from the edge. There was no perimeter guarding on the floor which was opensided nor was he wearing any personal protective equipment (T-22, 26, 31).

Mr. Grudzwick also inspected the eighteenth floor of Building B on November 27, 1972 where he observed two of Respondent's cement finishers using a Giraffe, a machine with a long extension and a sander on the end, to sand the ceiling. The floor was opensided and had no perimeter guarding and the men had no personal protective equipment. The men were working about ten feet from the edge of the floor (T-26-29).

There was no perimeter guarding on any of the floors of the housing project and this was visible at the site (T-32).

Mr. Grudzwick testified that he considered the lack of perimeter guarding a serious violation because the Respondent had knowledge of the violation and the violation would probably result in a fatality or serious injury (T-32). In accordance with the administrative procedures under which he operated he proposed an unadjusted penalty of \$1,000. This was reduced by 20% for "good faith" because the Respondent was cooperative and did not hinder his inspection in any way (T-35). No deduction was allowed for the size of the Respondent's business as it had 437 employees at the job site (T-38, 39). An additional deduction of 20% was allowed for "history" as the Respondent had no record of any previous violations of safety standards (T-39). The adjusted penalty proposed was \$600.

Section 17(j) of the Act provides that the Commission has authority to assess all civil penalties and that in assessing penalties due consideration shall be given to the appropriateness of the penalty with respect to the size of the business, the gravity of the violation, the good faith of the employer, and the history of previous violations.

With respect to gravity of the violation, the Judge is in agreement with the Compliance Officer that the violation charged against the Respondent was serious. Section 17(k) of the Act provides that

"a serious violation shall be deemed to exist, in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation."



In the recent case of Secretary of Labor v. Natkin and Co., OSAHRC Docket No. 401, the Review Commission held that if serious injury or death were substantially probable in the event of an injury occurring as a result of the violation of the standard, the violation was a serious one. In the instant case, a fall from the fifteenth, seventeenth or eighteenth floor of the buildings in question would in all probability have grave consequences. With respect to the element of knowledge of the presence of the violation, the evidence shows that there was no perimeter guarding on any of the floors of the buildings and this was visible to anyone on the job site, including of necessity the employees of the Respondent in charge of the work on the project.

The gravity of the violation can be measured by the number of employees affected by the violation, the probability and degree of injury and the extent to which the standard involved was violated. There were five of Respondent's employees exposed to the hazard which existed on three separate floors, and an accidental fall would have grave consequences. The Judge is of the view that the penalty of \$500 proposed by the Complainant gives due consideration to the factors of good faith and the Respondent's negative history of safety violations and is an appropriate penalty under the circumstances of this case.

2. Alleged Violation of 29 CFR 1926.250(b)(1).

On November 22, 1972, Mr. Grudzwick observed shoring material, 4 by 4 inches and 8 feet in length, stored on the eleventh floor of Building C. There was no guarding at the edges of the floor (T-14). The material was piled about

four feet wide and four and a half feet high and extended about a foot over the edge of the floor (T-12, 15). On looking over the edge he observed bricklayers, not employees of the Respondents, working on a scaffold at about the third or fourth floor (T-13).

On the fourteenth floor of Building D which had no perimeter guarding, Mr. Grudzwick observed steel braces stored at the edge of the building and extending about a foot over the edge (T-15, 16). The steel braces, which were used to tie in forms, were stored in stacks of eight about three feet wide and three feet high (T-15, 16). Mr. Grudzwick saw workers of different trades walking below the place where the steel braces were stored and there were bricklayers working on a scaffold at the third or fourth floor, but none were employees of the Respondents (T-15-17).

The Respondent in its brief raised the question whether the Complainant had established that materials stored in Buildings C and D belonged to the Respondent. This matter was settled by the parties at the hearing by stipulation (see Stipulation No. 7 above).

The first question presented for determination is whether the standard allegedly violated is applicable to the facts in this case. The standard, in pertinent part, prohibits storing of material "within 6 feet of any hoistway or inside floor openings" (underlining supplied). In the instant case, the material was stored at the outer edges of the floors. The intent of the standard appears to be to prevent material from falling into openings in the floors, and not to protect material from falling off the floors and outside the building. It is

the opinion of the Judge that the standard was not violated by the storage of material at the peripheral edges of the floors.

Another reason, in the opinion of the Judge, that the alleged violation cannot be sustained, is that none of the Respondent's employees were exposed to the hazard contemplated by the standard namely, being struck by falling material. The only persons endangered by the possibility that the stored material would fall were workmen not employed by the Respondents. In the case of Secretary of Labor v. City Wide Tuckpointing Service Co., OSAHRC Docket No. 247, decided May 24, 1973, Chairman Moran held in a case involving a standard which required a screen on a scaffold where persons were required to work or pass underneath, that the applicability of the standard could not be extended to provide protection for pedestrians or other non-employees. The decision specifically held that only where employees of a cited employer are affected by noncompliance with a standard can such an employer be in violation of Section 5(a)(2) of the Act. To the same effect is the decision of Judge Watkins in Secretary of Labor v. Martin Iron Works, Inc., OSAHRC Docket No. 606, cited by Respondent which is currently under review by the Commission.

#### FINDINGS OF FACT

On the basis of the Citation, Notice of Proposed Penalty, Notice of Contest, pleadings, stipulations, the testimony adduced at the hearing and the representations of the parties, it is concluded that on the record as a whole, substantial evidence supports the following findings of fact:



1. Paragraph 1 through 8 of the Stipulations are incorporated herein as findings of fact.

2. There is no history of previous violations of the Occupational Safety and Health Act of 1970.

3. As a result of inspection on November 22, 1972 and November 27, 1972 of a workplace under the operation and control of the Respondents at the Harlem River Park Housing Project, Depot Place and Harlem River, Bronx, New York, the Complainant, on January 3, 1972, issued to the Respondents a Citation for serious violation 29 CFR 1926.500(d)(1) for failure to ensure that the open-sided fifteenth floor of Building D, and the seventeenth and eighteenth floors of Building B were guarded by standard railings or equivalent.

4. As a result of inspection on November 22, 1972 of a workplace under the operation and control of the Respondents at the Harlem River Park Housing Project, Depot Place and Harlem River, Bronx, New York, the Complainant, on January 3, 1973, issued to the Respondents a Citation for violation of 29 CFR 1926.250(b)(1) for failure to ensure that material stored inside of Building C on the eleventh floor and inside Building D on the fourteenth floor, were not placed within six feet of any hoistway or inside floor openings.

5. On January 3, 1973, the Respondents were notified by the Complainant of a proposed penalty of \$600 for the serious violation of the standard referred to in paragraph (3) above and of a proposed penalty of \$35 for the violation of the standard referred to in paragraph (4) above, for a total penalty of \$635.

6. On January 15, 1973, the Respondents filed with the Complainant a notice of its intention to contest the Citations and proposed penalties referred to in paragraphs (3), (4) and (5) above.

7. On November 22, 1972, the fifteenth floor of Building D at the workplace referred to in paragraph (3) above was more than 6 feet above the adjacent ground level, the floor was open-sided and the floor was not guarded by a standard railing or equivalent. Two of Respondents' employees were exposed to the hazard of falling off the edge of the floor to the ground, a distance of about 150 feet.

8. On November 27, 1972, the seventeenth floor and eighteenth floor of Building B at the workplace referred to in paragraph (3) above was more than 6 feet above the adjacent ground level, the floor was open-sided and the floor was not guarded by a standard railing or equivalent. One of the Respondents' employees was exposed to the hazard of falling off the edge of the seventeenth floor to the ground, a distance of about 170 feet, and two of the Respondents' employees were exposed to the hazard of falling off the eighteenth floor, a distance of about 180 feet.

9. The Respondents knew, or with the exercise of reasonable diligence could have known, of the presence of the facts recited in paragraphs (7) and (8) above, which constituted a serious violation of 29 CFR 1926.500(d)(1).

10. Giving due consideration to the size of the Respondents' business, the gravity of the violation, the good faith of the Respondents and the negative history of previous violations, the appropriate penalty for serious violation of 29 CFR 1926.500(d)(1) is \$600.

11. On November 22, 1972, there was material stored inside Building C on the eleventh floor and inside Building D on the fourteenth floor so that the material extended about a foot over the edge of the floors.

12. There were tradesmen working on the outside of the Buildings C and D beneath where the material was stored, but they were not employees of the Respondents.

13. None of the Respondents' employees were exposed to the hazard contemplated by 29 CFR 1926.250(b)(1).

CONCLUSIONS OF LAW

1. The Respondents are, and at all times material hereto were, engaged in business affecting commerce within the meaning of Section 3(5) of the Occupational Safety and Health Act of 1970.
2. The Respondents are, and at all times material hereto were, subject to the requirements of the Occupational Safety and Health Act and the standards promulgated thereunder, and the Commission has jurisdiction of the parties and of the subject matter herein.
3. Insofar as the Respondents are concerned, the effective date of the standards referred to in paragraphs (4) and (5) below is August 22, 1971.
4. Respondents violated the Occupational Safety and Health standard cited in 29 CFR 1926.500(d)(1) and is assessed a penalty of \$600.
5. Respondents did not violate 29 CFR 1926.250(b)(1) and no penalty should be assessed.

ORDER


Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record, it is ORDERED

1. The Citation issued on January 3, 1973, for serious violation of 29 CFR 1926.500(d)(1) and the penalty proposed by the Complainant of \$600 are affirmed.



- 15 -

2. The Citation and Notification of Proposed Penalty issued on January 3, 1973 for violation of 29 CFR 1926.250(b)(1) are vacated.

  
JOSEPH CHODES  
JUDGE, OSAHRC

12 JUL 1973

Dated:  
New York, N. Y.

RECEIVED  
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UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

-----  
PETER J. BRENNAN, SECRETARY OF LABOR, :  
Complainant, :  
v. : OSHRC DOCKET NO.  
UNDERHILL CONSTRUCTION CORP., individually, : 2081  
and DIC CONCRETE CORP., individually and :  
trading as DIC-UNDERHILL, A JOINT VENTURE, :  
Respondents. :  
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PETITION FOR DISCRETIONARY REVIEW

Comes now Complainant, the Secretary of Labor, and petitions the Occupational Safety and Health Review Commission to review the ruling of Commission Judge Joseph Chodes of July 12, 1973, insofar as it pertains to Judge Chodes' holding that Respondent had not violated 29 CFR 1926.250(b)(1) as alleged in Complainant's Citation and Complaint.

As a basis for his decision Judge Chodes found:

- (1) the standard in question to be applicable "in pertinent part," to the storage of material "within six feet of any hoistway or inside floor opening." 1/

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1/ Decision and Order, Secretary of Labor v. Underhill Construction Corporation et al., OSHRC Docket No. 2081 at 10 (July 12, 1973) (emphasis in original).

- (2) the standard to require exposure of Respondent's employees as a condition of establishing a violation;
- (3) the rule of Secretary of Labor v. City Wide Truckporting Service Co., OSHRC Docket No. 247 (May 24, 1973) to be controlling in the instant case.

As grounds for his petition the Secretary asserts:

- (1) Judge Chodes misinterpreted the clear intent and import of 29 CFR 1926.250(b) (1) when he concluded that the standard did not apply to the facts of this case.
- (2) That a violation of the standard may be established even though Respondent's own employees were not exposed to the violative conditions.
- (3) The rule of City Wide Truckporting Service Co. is distinguishable on its facts and is not controlling in this case.

Respectfully submitted,

William J. Kilberg  
Solicitor of Labor

Benjamin W. Mintz  
Associate Solicitor for  
Occupational Safety and Health

Michael Rosliotto  
Attorney



CERTIFICATE OF SERVICE

I certify that a copy of the attached Petition for Discretionary Review has been served upon Respondent by mailing a copy of the above document on this 2nd day of August, 1973 to Mr. Bernard Jerseki, Dic Underhill, a joint venture, 212-02, 41st Street, Bayside, New York 11361 and to Local 46, Lathers, 1322 3rd Avenue, New York, New York, Local 6A, Cement & Concrete Workers, 37 Union Square, New York, New York, and Local 20, Carpenters, 544 Vanderbilt Avenue, Staten Island, New York, authorized employee representatives.

Michael Robilotto  
Attorney

UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW  
COMMISSION

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PETER J. BRENNAN, SECRETARY OF LABOR,

Complainant,

v.

OSHRC DOCKET NO.

UNDERHILL CONSTRUCTION CORP., individually,  
and DIC CONCRETE CORP., individually and  
trading as DIC-UNDERHILL, A JOINT VENTURE,

2081

Respondents.

----- x

PETITION FOR DISCRETIONARY REVIEW

Come now Respondents and petition the Occupational Safety and Health Review Commission to review the ruling of Commission Judge Joseph Chodes of July 12, 1973, insofar as it pertain to Judge Chodes' holding that the Occupational Safety and Health Act is applicable to the subject contract and/or subcontract.

As a basis for his decision, Judge Chodes found:

1. "there is no question but that, at least insofar as non-federal construction contracts are concerned, the effective date of the standards in 29 CFR Part 1926 is August 27, 1971 as provided in 29 CFR 1910.17(a). Whether the same effective date applies to Federal or federally assisted contracts is not necessary to decide here as there is no evidence in the case that the Respondent was operating under a Federal or federally assisted contract. Accordingly, the Respondent may be held accountable for the violations charged which occurred subsequent to August 27, 1971, namely, on November 22, 1972."
2. "inspected the fifteen floor of Building D and found two field engineers, employees of the Respondents, 'checking targets' at the edge of the floor which had no perimeter guarding. The men had no safety belts or other type of personal safety equipment, and they were 'hanging over the edge' ."
3. "inspected the seventeenth floor of Building B on November 27, 1973, and saw an employee of the Respondents, a carpenter, working on forms, approximately fifteen feet from the edge. There was no perimeter guarding on the floor which was open-sided nor was he wearing any personal protective equipment."
4. "inspected the eighteenth floor of Building B on November 27, 1972 where he observed two of Respondent's cement finishers using a Giraffe, a machine with a long extension and a sander on the end, to sand the ceiling."



As grounds for their petition the Respondents assert:

1. That 29 CFR 1926.1050 excludes all contracts advertised prior to April 24, 1971 or negotiated prior to April 27, 1971, whether or not such contracts are Federal or federally assisted.

2. The Secretary failed to allege in his complaint or to meet his burden of proof at the trial establishing that the subject subcontract was advertised prior to April 24, 1971 or negotiated prior to April 27, 1971.

3. In any event, the Secretary failed to allege in his complaint or to meet his burden of proof at the trial that the subject project was not a Federal or federally assisted contract.

4. The Secretary failed to establish that the two field engineers "checking targets" on the fifteenth floor of Building D:

(a) could have performed their job activity if perimeter protection were in place;

(b) would not have been exposed to greater danger during the necessary act of removing the perimeter protection in order to perform their job activity and then replacing same.

5. The Secretary failed to establish that the employee on the seventeenth floor of Building B was in fact

(a) working on forms, performing any other work activity or in fact authorized to be on that floor at that time; and

(b) was close enough or likely to be close enough to the edge of the building so as to place himself in a hazardous position.

6. The Secretary failed to establish that the cement finishers on the eighteenth floor of Building B were likely to go near the edge of the building and thus be placed in a hazardous position.

7. It was error for Judge Chodes to base his determination upon the fact that the Respondents' employees were not wearing personal protection equipment inasmuch as the Secretary did not issue a citation for such violation.

Respectfully submitted,

DIC-UNDERHILL, A JOINT VENTURE

By Bernard Jereski  
Bernard Jereski



UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

UNDERHILL CONSTRUCTION CORP.,

Respondent.

OSHRC DOCKET NO. 2081

DECISION

Before MORAN, Chairman; VAN NAMEE and CLEARY, Commissioners.

CLEARY, Commissioner:

On July 12, 1973, Judge Joseph Chodes issued his decision and order in this case affirming the Secretary's citation for serious violation and vacating the Secretary's citation for non-serious violation. A penalty of \$600 was assessed for the serious violation.

On August 14, 1973, the Judge's decision and order was directed for review by the Commission pursuant to section 12(j) of the Occupational Safety and Health Act of 1970 (29 U.S.C. §651 et seq.).

The Commission has reviewed the entire record in this case and concludes that the Judge has correctly disposed of all material issues.

Accordingly, it is ORDERED that the Judge's decision and order is hereby affirmed in all respects.

FOR THE COMMISSION

*William S. McLaughlin*  
William S. McLaughlin  
Executive Secretary

DATED: March 7, 1974



UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

1825 K STREET, NW  
WASHINGTON, D C 20006

3-7-74

CERTIFIED #  
RETURN RECEIPT REQUESTED

IN REFERENCE TO SECRETARY OF LABOR v.

DIC-UNDERHILL, A JOINT VENTURE

OSAHRC  
DOCKET NO. 2031

NOTICE IS HEREBY GIVEN TO THE FOLLOWING:

FOR THE SECRETARY OF LABOR

Francis V. LaRuffa  
Regional Solicitor  
1515 Broadway  
Room 3555  
New York, New York 10036

OF COMMISSION DECISION

FOR EMPLOYER

Bernard Joreski  
Dic-Underhill, A Joint Venture  
212-02 - 41st Avenue  
Dayside, New York 11361

To wit: See attached.

FOR EMPLOYEES

Joseph Chodes, Judge, OSAHRC  
1515 Broadway  
Room 3800  
New York, New York 10036

*William S. McLaughlin*

WILLIAM S. McLAUGHLIN  
EXECUTIVE SECRETARY

MORAN, Chairman, Concurring in Part, Dissenting in Part:

I agree that the Judge properly disposed of a citation alleging a violation of the Act because of noncompliance with the occupational safety and health standard published as 29 C.F.R. § 1926.250(b)(1) when he vacated the same.

I dissent from the Commission's affirmance of the Judge's finding that respondent violated the Act by failure to comply with the requirements of 29 C.F.R. § 1926.500(d)(1). I do so because I do not believe the evidence demonstrated any employee exposure to hazard - an essential element of proof of any violation of this Act.

The citation avers that the requirements of the last-cited occupational safety and health standard were not observed by the respondent because of a failure "to guard open-sided floors, six feet or more above the adjacent floor or ground level, by standard railings or the equivalent thereof."

The citation describes three separate hazards as the basis for the citation. The only witness at the trial was a Labor Department compliance officer who testified for the complainant relative to an inspection he conducted which formed the basis for the citation. His testimony establishes that, on November 22, 1972, he observed two of the respondent's field engineers "checking targets" by "hanging over the edge" of a floor. On the same day on a different floor, he saw two of the respondent's cement finishers sanding the ceiling with a "giraffe," a machine with a long extension arm. They were about 10 feet from the edge of the floor. On all three occasions, the height of the floors was sufficient to require guards, the sides of the floors were open and unguarded, and the workmen were not using personal protective equipment.



As to the work of the field engineers, the compliance officer expressed the opinion on cross-examination that they could not have performed their work if perimeter guards had been in place. Although his subsequent testimony indicated that he was not entirely sure that his opinion was correct, that opinion was not rebutted.

The Commission has held in several cases that noncompliance with the requirements of an occupational safety and health standard is justified when necessary to permit the accomplishment of required work. Secretary of Labor v. Masonry, Inc., OSAHRC Docket No. 2693, November 6, 1973; Secretary of Labor v. La Sala Contracting Company, Inc., OSAHRC Docket No. 1207, February 23, 1973; Secretary of Labor v. DeLuca Construction Corporation, OSAHRC Docket No. 1225, January 10, 1973. In view of the un rebutted testimony of the compliance officer in the instant case, the evidence concerning the activities of the field engineers is insufficient to support the complaint.

As to the other three workers, no evidence was introduced to show that their jobs required them to move from the locations where they were observed to positions closer to the edge of the floors on which they were working. The lack of this evidence is a fatal deficiency in the proof required to establish a violation of the Act.

The Congressional intent behind the Act is to protect working people from hazards at their place of employment. Secretary of Labor v. City Wide Tuckpointing Service Co., OSAHRC Docket No. 247, May 24, 1973. In this connection, the following remarks in Secretary of Labor v. A. Munder & Son, Inc., OSAHRC Docket No. 1858, May 22, 1973, are applicable:

"The crux of any violation is whether there has been employee exposure to an unsafe working condition rather than the fact that specifications of a standard have not been followed . . . . There could have been no employee injury without exposure to the hazard for which the standard was promulgated. Since the primary objective of the standards is to protect employees, the objective would have been achieved by employer restraint on the actions of his employees."

In this case, there is no evidence that the three workers were required to move closer than 10 feet from the floor perimeters in order to accomplish their work. The fact that they could have moved closer is not controlling. Therefore, as was held in Munder, evidence of work performance at distances of 10 feet or more from the edge of a floor, standing alone, is not sufficient to establish that the carpenter and the two cement finishers were in any danger. See Secretary of Labor v. Ellison Electric, OSAHRC Docket No. 412, June 7, 1972.

Occupational safety and health standards are not building codes. They are devices for protecting employees from hazard. One can violate the Occupational Safety and Health Act by failing to comply with an occupational safety and health standard - but one cannot be in violation of a standard unless his failure to observe the requirements thereof has thereby exposed one or more of his employees to hazard. In other words, the standards cannot stand alone. They implement the Act and both the Act and the standards must be considered as a single legislative scheme. I am afraid the Commission's decision in this case has failed to take cognizance of this.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September, 1974,  
I served the foregoing motion to file our brief in typewritten  
form and our printed appendix upon counsel for all parties, by  
causing copies to be mailed, postage prepaid, to:

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